

PARTICIPATING IN  
LIVESTOCK GRAZING  
DECISIONS  
ON THE  
NATIONAL FORESTS

A Citizen Handbook

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ON THE  
NATIONAL FORESTS**

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APRIL 1991

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**Dedication**

This Handbook is dedicated to the many grazing activists who came before us and to the many people both inside and outside of the Forest Service who've helped us learn what little we've learned so far!



Recycled



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# **PARTICIPATING IN LIVESTOCK GRAZING DECISIONS on the NATIONAL FORESTS**

## **Introduction**

This Handbook is written with the belief that a crucial ingredient in the reform of public lands grazing practices is the establishment of a network of citizen activists who participate in livestock grazing decisions on National Forests throughout the West. It is written by citizen activists to help other citizen activists get involved in livestock grazing decisions in the National Forests.

There is a companion handbook presently being prepared to help citizen activists get involved in livestock grazing decisions on Bureau of Land Management lands. When that handbook becomes available, citizens will probably want to refer to it for additional ideas on how to get involved in public lands grazing decisions.

While we hope this Handbook is helpful, the best teacher is, as always, EXPERIENCE! In this regard--WE URGE YOU TO JUMP IN--GET STARTED--LEARN AS YOU GO! While you will probably want to skim this Handbook before getting started, don't feel like you have to understand everything completely before you start; things will make more sense after you get started and see how things are done on the National Forest you are working with.

The authors of this Handbook have noticed that grazing decisions are often handled differently by different Districts on a National Forest (and even by different range conservationists on a given District!), so we presume that different National Forests will handle grazing decisions differently. We encourage you to learn how your National Forest approaches grazing decisions and proceed from there. Since this Handbook is intended to be a "first cut," we also urge you to forward your experiences to the authors so the lessons you learn can be included in subsequent editions. Thanks and good luck.

[There are many aspects of livestock grazing on public lands (e.g. the subsidy of public lands grazing through the charging of below-cost grazing fees or the destruction of predators such as coyotes and mountain lions on public lands in order to protect livestock) that are not discussed in this Handbook. For more information on these topics, contact the Public Lands Action Network.]



# Part I

## Getting Started

As we said in the Introduction, the important thing is to get started. This Part of the Handbook is intended to give you some ideas on how to get started, but don't worry about doing them all in the very beginning; the ones you don't do in the beginning you'll probably find yourself naturally wanting to do as you get involved in Forest Service decision-making processes related to livestock grazing.

### A. Get an Allotment Map and Choose Your Allotments

Grazing decisions on National Forests are typically made on the basis of allotments. An allotment is an area of land whose boundaries are primarily based on historical (rather than ecological) reasons. The privilege of grazing livestock on an allotment is usually held by a "permittee" (or group of permittees).

Your first job is to figure out which allotment or allotments you want to begin your involvement with. To do this you should start by getting a map of the grazing allotments for the National Forest you are interested in. While they probably don't advertise them at the front desk, you should be able to get an allotment map from the Supervisor's Office of the National Forest you are interested in. If you don't know how to get in touch with the Supervisor's Office for the National Forest you are interested in, see the list of Forest Service Regional Offices in the Appendix. Contact the Regional Office for your area and ask for the phone number and address of the Supervisor's Office for the National Forest you are interested in.

If you don't succeed in your first effort to get an allotment map, try again--bureaucracies often tend to "forget" about requests--especially requests that may pose a threat to the bureaucracy's stability. If two or three tries don't do it, try contacting the appropriate Regional Office. If that doesn't work either, look for help from the Public Lands Action Network (PLAN), or a national environmental organization. (See the Section of this Handbook entitled "Look for Support," and Appendix E on "Supporting Environmental Organizations.")

Once you have a map of the allotments for the National Forest you are interested in, decide which allotment or allotments you want to monitor. You might choose an allotment because it contains one of your favorite spots for camping or hiking or birdwatching or hunting or whatever. You might choose an allotment because it is close to where you live and you know your time to get out in the field may be limited. You might choose an allotment because you are concerned about the condition it is in. Or, you might choose an allotment because you know the Forest Service is, or soon will be, in the process of



reviewing its status and you want to get involved with the process from the beginning stages. Indeed, you might want to wait to decide which allotment or allotments to monitor until after you've met with your local Forest Service personnel.

Once you've chosen an allotment, try to spend as much time on it as possible, seeing as many parts of it as you can. Compare it's condition to areas of similar vegetation on and off the Forest. For more information on things to look for, see Part III of this Handbook on "Important Objectives."

## **B. Gather Key Documents**

To be involved in Forest Service livestock grazing decisions, there are a number of key documents you should try to obtain. In addition, you'll probably find a number of other documents that are helpful. The nature of these additional documents will vary depending on the specific problems of your Region, Forest and Allotment.

### **1. The Forest Plan and Any Amendments**

Under the National Forest Management Act of 1976 (See Part II of this Handbook), National Forests are mandated to adopt comprehensive Land Management Plans. Most Forests did this in the 1980s. You should get a copy of the Final Land Management Plan (often referred to as "The Forest Plan") and the accompanying Environmental Impact Statement (EIS) for the National Forest you are interested in working with.

Many National Forest Plans have been appealed by one or more organizations. You should inquire at the Supervisor's Office about the status of any such appeals. You will probably also want to contact any environmental or citizens' organizations that appealed the Forest Plan and discuss their appeal with them. You should also check to see if there have been any amendments to the Forest Plan. If there have been amendments, ask for copies of these too.

Once you've gathered the Forest Plan, the EIS and any amendments, you should review them, especially those parts that have to do with what the Forest Service usually calls "the range resource." In addition, you'll want to review these documents for information on wildlife, watershed, riparian, recreation and other non-commodity issues. If you find the Plan difficult to understand, don't feel alone. The authors of this Handbook know of many Forest Service employees who don't even really understand the Plan for their own Forest! Nonetheless, you'll probably want to refer back to the Plan from time to time as there are often key provisions in the Plan that can be used as legal handles in your efforts to reform grazing practices on the Forest.



## **2. The Range Handbook for Your Region**

Each Region of the Forest Service should have a Range Analysis and Management Handbook. You should try to get a copy from the National Forest you are working with or the Regional Office. This is the Handbook that the National Forest should be following as they analyze an allotment and begin to make decisions about the management and stocking rate for the allotment. In practice, it has been the authors' experience that different employees vary substantially in how closely they follow the Range Handbook. Nonetheless, we urge you to review the Range Handbook and plan on referring back to it from time to time for legal handles to use in reforming the grazing practices of the Forest you are working with.

## **3. Other Documents**

As mentioned above, you will probably want to start building your library with references and reports that are useful for your area and the problems of your region. At the end of this Handbook, there is an annotated bibliography of the reports that the authors of the Handbook have found most helpful. As you come across other documents that are particularly helpful, you may want to share them with other activists through the Public Lands Action Network.

## **C. Meet with Forest Service Personnel**

After you've chosen the allotment (or allotments) you've decided to monitor, arrange a meeting with the Forest Service personnel who are responsible for overseeing livestock grazing on the allotment. Usually, this will be a range conservationist for the District of the Forest where the allotment is located. If you are not sure who to meet with, ask the head of Range Management for the Forest in the Supervisor's Office.

When you meet with the Forest Service personnel responsible for the allotment you are interested in, we encourage you to be polite and courteous. Remember that this person probably inherited the allotment in the condition it is in. Moreover, the authors believe that there is at least a 50:50 chance that the Forest Service employee is at least as interested in seeing an improvement in the condition of the allotment as you are--though you may disagree on what is the best course to follow in trying to achieve that improvement.

During your meeting with the Forest Service personnel, we encourage you to do the following:

- Ask for a map of the allotment. The Forest Service should have a copy of a Range Improvement Map for the allotment. This will show you the boundaries of the allotment, as well as existing fences and water developments. If there has been a recent range analysis for the allotment, you should ask for a copy of this too. The range analysis should indicate the condition of the lands within the allotment and will give you an idea of which areas of the allotment are in relatively good condition and which ones are in poor condition.



-Discuss the Forest Service employee's assessment of the condition of the allotment. Get a sense for what he or she feels are the priority issues that need to be addressed, if any. Ask how the condition of this allotment compares to other allotments on the District.

-Ask to see the existing records on the allotment. We think you'll be surprised at the extent of the existing documentation. Indeed, you may need to schedule another time to come back and review the existing records. These documents are public records and you shouldn't have any problems getting access to them, but if you do, seek help from higher up within the Forest Service, or from the Public Lands Action Network or a national environmental organization.

-Ask what plans are currently in place for reviewing the status of the allotment. Does the allotment have an existing Allotment Management Plan? (An Allotment Management Plan, or AMP, is a long term plan for the allotment and indicates plans for increasing or decreasing the number of fences and water developments as well as other actions such as prescribed burns or other efforts to manipulate the types of vegetation on the allotment.) If so, is the AMP adequate or does it need updating? If there is no AMP in place, when is one scheduled to be prepared?

-When is the Annual Operating Plan issued for the allotment? (The Annual Operating Plan (AOP) is issued annually and indicates which pastures will be used and for what periods of time.)

-Is the Forest Service planning other activities for the allotment, such as a timber or fuelwood sale, a prescribed burn, a new road, a new trail or campground etc.?

-Try to get a feel for the employee's philosophy on range management and related issues such as wildlife habitat management, watershed and riparian conditions, recreational use of the allotment and the management of any threatened or endangered species present on the allotment. You may also want to determine what the employee thinks of Allan Savory's Holistic Resource Management concepts. ( For a brief description of Allan Savory and Holistic Resource Management, see Appendix G.)

-Let the Forest Service employee know you are interested in monitoring decisions made about this allotment, and ask to be kept informed about any and all actions taken on the allotment.

After your meeting with the Forest Service personnel, we encourage you to spend as much time as possible on the allotment and to communicate regularly with the Forest Service about what you are seeing and to remind them that you have a continuing interest in the allotment. Bureaucracies have a way of sometimes conveniently forgetting or ignoring requests from the public, especially if you haven't had time yet to establish the seriousness of your involvement. The authors have found that the best antidote is to be very persistent about your concerns. (See Appendix H on "The Three 'Bs' for Activists--Bureaucracy, Backlash and Burnout")

## **D. Look for Support**

A review of the history of efforts to reform public lands grazing practices (See the Bibliography for references) should convince you that reform does not come



easily-- though activists around the country are optimistic that times are finally changing. Nonetheless, it is the authors' experience that progress can still be very slow. To fortify yourself for the long haul, we urge you to seek sources of support. Some of these sources of support may offer you substantive legal or technical help in your efforts to reform grazing; others may serve more as moral support--to help you feel less alone. Sometimes, the authors have felt as though they were the only ones who thought the emperor didn't have any clothes on--i.e. that the condition of much of the range on their local Forest was in horrible condition. In such an environment, finding sources of moral support can help preserve your sanity! Following are some suggestions where you might find legal, technical and moral support.

## **1. Legal Support**

There are a number of attorneys around the country who have experience in grazing cases. The Public Lands Action Network is in touch with a number of these attorneys and can help you get legal help when it is needed. Many of these attorneys already have very full schedules and while they may not be able to give you direct support, they can probably give you some advice on your situation and may be able to steer you to attorneys who can help. In addition the Land and Water (LAW) Fund of the Rockies (See Appendix E on Supporting Environmental Organizations) is establishing a network of attorneys in western states that are willing to help with environmental cases. You can try contacting them.

In addition, you should try to look for legal support in your local community. If local attorneys know they can get support from lawyers and organizations with experience on grazing issues, they may be more willing to help with your case. Be sure to bring as much documentation (statistics, pictures, preliminary legal research etc.) as possible when you meet with a local attorney; he or she may need to be convinced of the importance of your case.

## **2. Technical Support**

You will probably want to look for support for the technical component of your argument. You may find this technical support from wildlife biologists, ecologists, soil scientists, or retired or otherwise independent range conservationists. You might want to try contacting some of the scientists who authored the publications listed in the bibliography. Or you might try contacting your state's Game and Fish Department (See Appendix D) or the United States Soil Conservation Service office for your area (See Appendix N). You will probably want to contact the offices of any national environmental organizations that are active in your state. In particular, the Nature Conservancy (See Appendix C) may be able to help you learn about unique ecosystems or wildlife species in your area. If these agencies or organizations can't give you help directly, they may be able to steer you in the right direction.

You may find support at a State University, but if you don't, don't despair. It has been the authors' experience that many scientists at Universities are



reluctant to get very involved in grazing decisions because in the past, the political backlash has often been fierce. While we are hopeful that this environment of intimidation is changing, it may be a while before scientists are willing to risk involvement with grazing activists. Nonetheless, you may get some moral support "off-the-record" that can be very encouraging. For example, the authors have often been told, "I really support what you are doing, but my professional position is such that I can't openly get involved in what you are doing." While this may not be exactly what you'd hoped for, it helps give you the courage to continue on in the face of what can be considerable opposition!

### **3. Support Within the Forest Service**

The authors have found a surprising amount of support within the Forest Service itself. Sometimes that support comes from Forest Service personnel who are higher up within the agency and who are to some extent insulated from the political pressure that can affect local Forest Service employees so severely.

Sometimes support comes from local Forest Service employees who feel their own hands are somewhat tied, but who will quietly let you know that you are on the right track. If these employees are to trust you, the authors feel that it is very important that citizen activists do all they can to protect these employees from recriminations from within. Hopefully, this will not be such a pressing need in the future, but for now, **WE URGE YOU TO DO EVERYTHING YOU CAN TO PROTECT FOREST SERVICE EMPLOYEES WHO ARE OPEN AND HONEST WITH YOU.** For example, if they share sensitive information, find a way to disguise your source. If you need help on ways to do this, please feel free to contact the authors of this Handbook.

After working with a National Forest for awhile, it may become obvious to you who your friends are. If you need help identifying friends, you might try contacting the Association of Forest Service Employees for Environmental Ethics (AFSEE). (See Appendix E.)

### **4. Public Support**

Start building public support for what you are trying to achieve on the allotment. Join forces with other individuals and organizations in your area or state that are concerned about the condition of the land. Get to know the reporters and editors of your local newspapers and radio and TV stations and try to get them to cover your story at key times. Talk about the effects of livestock grazing to community organizations and look for opportunities to help educate the public about the condition of their lands. Many people don't have any sense that the land could look any different than it does. Help them see the effects of livestock grazing by conducting field trips or seminars or developing a slide show to make your point.



## **E. Build a Written Record**

One of the protections you have against the bureaucracy "forgetting" you is to keep a written record of your interest and involvement. That means taking a few minutes at key points to put your thoughts and any agreements you may have reached with the Forest Service into writing and sending a copy to the Forest Service. This can also be helpful if later you need to go to court. In short, TAKE THE TIME TO PUT IT IN WRITING!

## **F. Freedom of Information Act Requests**

The authors believe you will usually be able to get the information you want just by asking the Forest Service. If, however, you have reason to believe that you are not getting one or more important documents, you may want to file a Freedom of Information Act (FOIA) request. Requests under FOIA can only be made for documents that you believe already exist; it can not be used to force an agency to prepare a document it hasn't already prepared. If you decide a FOIA request is needed to get what you want, remember to include the following in your request:

- An indication on both the letter AND THE ENVELOPE that you are making a FOIA request.

- If you are making the request on behalf of an organization, an indication that it is a non-profit organization. If you have a 501 (c) (3) number from the Internal Revenue Service, include that.

- An indication that you will let other members of the public see the document if they request to do so.

- An indication that you will not be using the document for monetary gain.

If you include the information summarized above you will probably qualify for a waiver of copying costs. If you have any questions you can talk to the FOIA officer on the Forest you are working with or with an attorney with a national environmental organization.

Appendix I includes a sample FOIA request letter to the Bureau of Land Management, but unless you have strong reason to believe you're not getting a specific document, the authors believe you will save both yourself and the agency time and effort, if you give the agency every chance to provide the information you want before filing a FOIA request.



## PART II

### The Legal Framework

While it is important that you begin to learn the legal framework governing grazing decisions on National Forests, if you find yourself getting bogged down in this Part of the Handbook, DON'T DESPAIR! You might want to turn to the Summary for this Part in order to learn the key concepts, and then plan to refer back to this Part after you get started with monitoring your allotment or allotments. Also, if you find yourself with a serious legal question, the authors urge you to seek qualified legal help as neither of us are attorneys.

The legal framework governing grazing decisions on the National Forests includes:

- Laws passed by Congress (sometimes referred to as statutes),
- Regulations adopted by administrative agencies, particularly the Department of Agriculture which contains the Forest Service,
- Court cases from various levels of the Federal court system,
- The Forest System Manuals and Handbooks, particularly those pertaining to range management, permit administration and National Environmental Policy Act procedures, and
- The Land Management Plan for a given National Forest.

This Part of the Handbook briefly summarizes each of these components of the legal framework governing grazing decisions on the National Forests. Further legal information is included in the memorandum in Appendix F. If you want to look up any statutes (laws), regulations or court cases, find your nearest law library. If you don't live near a law school, try the County Courthouse--they often have a basic law library with most of what you'll need and a law librarian who can help you track down what they don't have.

#### A. Laws

A brief summary of laws governing grazing on the National Forests follows. For full details, you may want to look these laws up (Don't worry it's really not all that difficult!). Laws can be cited in a number of ways. Technically, the United States Code (U.S.C.) citations given here for Congressional acts may not include all of the provisions of an act, but for general purposes these U.S.C. citations usually contain the key policy provisions of the Act.

1891-The Forest Reserves Act (Act of March 3, 1891): Certain portions of the federal lands were identified as forest reserves and placed under the control of the Department of the Interior. (If you are relatively new to public lands issues, it is worth noting that there are two Federal Departments that are



primarily responsible for the Federal lands. The Department of the Interior contains the Bureau of Land Management as well as the National Park Service and the United States Fish and Wildlife Service. The Department of Agriculture contains the United States Forest Service (USFS) which is responsible for about 187 million acres of National Forest and about 4 million acres of National Grasslands.) Note, the forest reserves were originally managed under the Department of the Interior and later transferred to the Department of Agriculture.

1897-The Organic Act (16 U.S.C. ss. 473-482, 551): This Act gave the Department of the Interior the general power to regulate the forest reserves.

1905-The Transfer Act (16 U.S.C. s. 472): This Act established that grazing on the forest reserves was to be controlled by the Forest Service within the Department of Agriculture. Acting under the broad authority granted to it, the Forest Service imposed fees for grazing permits on the forest reserves in 1906.

1950-The Granger-Thye Act (16 U.S.C. s.5801): This Act gave the Secretary of the Department of Agriculture (the top official of the Department), the authority to issue grazing permits for up to 10 years but emphasized "That nothing herein shall be construed as limiting or restricting any right, title, or interest of the United States in any land or resources." (Similar authority--with a similar limitation--was granted to the Department of the Interior by the Taylor Grazing Act (43 U.S.C. s. 315) of 1934.)

1960-The Multiple-Use and Sustained Yield (MUSY) Act (16 U.S.C. s. 528-531): This Act clearly directs that the National Forests will be administered for multiple use and sustained yield. While the Department of Agriculture already had broad authority to manage the National Forests for both commodity (e.g. timber and livestock grazing) as well as non-commodity uses such as recreation, watershed, wildlife and fish uses, the Multiple-Use and Sustained Yield Act made this authority explicit.

With respect to grazing, it is worth noting that the MUSY Act notes that, " 'Multiple use,' means the management of ...the national forests...that will best meet the needs of the American people;...that some land will be used for less than all of the resources;..." Also, the MUSY Act notes that "'Sustained yield...' means ...a high-level of annual or regular periodic output of the various renewable resources of the national forests without impairment of the productivity of the land." The appeal of the Prescott National Forest Plan presently pending in the office of the Chief of the Forest Service charges that the grazing program proposed in the Prescott National Forest Plan did not comply with these provisions of the MUSY. Similar arguments may be able to be made for other National Forests.

1966-National Historic Preservation Act (NHPA) (16U.S.C. s.470): This Act protects areas of historic importance including archaeological and paleontological sites. It requires federal agencies considering actions (including grazing management actions) they must go through various



consultation processes in order to identify and mitigate potential adverse impacts on historic sites.

1969-The National Environmental Policy Act (NEPA) (42 U.S.C. s. 4321 et. seq.): This Act requires all federal agencies, including the Forest Service, to analyze environmental effects before undertaking any major federal action. The National Environmental Policy Act, the regulations adopted to implement it and the court cases interpreting the Act and the regulations comprise a very substantial body of environmental law which can't easily be summarized in this Handbook. The law, regulations and court cases do, however, offer one way to get a handle on grazing decisions. Indeed, the National Forest you are working with should follow NEPA procedures when implementing major actions such as adopting an Allotment Management Plan (AMP). This will be discussed further in Part III, on Citizen Involvement in Forest Service Grazing Decisions. If you have questions about NEPA procedures and policy we refer you to a law library, a lawyer, or a national environmental organization. (See Appendix E on Supporting Environmental Organizations.)

1973-The Endangered Species Act (ESA) (16 U.S.C. s.1531- 1543):This Act places limits on federal actions that could adversely affect the habitats of threatened and endangered wildlife. Under the ESA, the United States Fish and Wildlife Service (FWS) lists species that are either "Endangered" (likely to become extinct within all or a significant portion of their range) or "Threatened" (likely to become Endangered in the foreseeable future.) In addition, many species are listed as "Candidate" species and are awaiting a final determination on whether they will be included on the Threatened and Endangered (T&E) list. When a species is included on the T&E list, "critical habitat" is established and a recovery plan is written. In addition, the ESA prohibits federal agencies (such as the Forest Service) from undertaking actions that will harm any T&E species or its critical habitat.

1974-The Forest and Rangeland Renewable Resources Planning Act (RPA) (16 U.S.C. s. 1600-1614):This Act requires the Secretary of the Department of Agriculture (the "boss" of the Forest Service) to prepare an assessment of the demand for, supply and uses of various renewable resources such as timber and range. These assessments are referred to as RPA Assessments. The most recent assessment of the range forage situation in the United States is referenced in the Bibliography.

1976-The Federal Land Policy and Management Act (FLPMA) (43 U.S.C. S. 1701-1784): This Act primarily governs the Bureau of Land Management (BLM), but also addresses grazing management by both the BLM and the Forest Service. Under FLPMA, the BLM and the Forest Service are to manage federal lands in the national interest. According to the November 16, 1990 Forest Service memo in Appendix F, this means, " only when grazing is consistent with this general public interest is it authorized."

Under S. 1402 (a) of FLPMA (43 U.S.C. S.1752(a)) grazing permits may contain whatever terms and conditions the Forest Service deems appropriate and



"permits may be cancelled, suspended, or modified in whole or part pursuant to the terms and conditions of the permit." FLPMA also repeats the principle that, "Nothing in the act [implies] the creation of right, title, interest or estate in or to public lands in National Forests by issuance of grazing permits and leases." (43 U.S.C. S. 1752(h)) This becomes important when confronted with the argument put forward by some grazing permittees that a change in their permit constitutes a "taking of private property for public use without just compensation"-- a violation of the Fifth Amendment of the U.S. Constitution. As discussed briefly below and in considerable detail in the legal memorandum in Appendix F, this "takings" argument has no legal basis. Several statutory provisions and Federal court cases make it clear that grazing livestock on public lands is a privilege and not a right. Thus, permittees do not have a vested property right in the lands covered by a grazing permit.

1976-The National Forest Management Act (NFMA) (16 U.S.C. s. 1600-1614): This Act established the statutory framework within which the Forest Service was to develop and adopt a new set of comprehensive land-use plans for the National Forests. (The Forest Service has a long history of developing management plans of various types, but the "Land and Resource Management Plans (LRMPs)" adopted as a result of the NFMA are usually referred to as "The Plan" for any given National Forest, or group of Forests.) The regulations adopted under the authority of the NFMA focus primarily on timber planning but also include several provisions related to the planning of livestock grazing on National Forests. These regulations are discussed further below in the subsection on "Planning Regulations."

1978-The Public Rangelands Improvement Act (PRIA) (43 U.S.C. s.1901-1908): This Act requires inventories of public rangelands and their condition and specifies that public rangelands will be managed to maintain and improve their condition. Unfortunately, however, the Act does not contain specific enough standards to ensure that its goals are really met and as a result, PRIA has been responsible for little or no improvement in the condition of western rangelands. The PRIA also established a formula for determining the grazing fee for livestock on public lands. This formula was used until 1985 and now a similar formula adopted by Presidential Executive Order is used annually to determine the grazing fee. It is under this formula, for example, that the grazing fee in 1991 is set at \$1.97 per animal unit month (AUM). (An AUM is the amount of forage required by one mature (1000 lb.) cow (or the equivalent) for a month assuming an average daily consumption of 26 pounds of dry matter per day (i.e. approximately 800 pounds of forage per month.)

1977-The Clean Water Act (CWA) (33 U.S.C. SS 1251-1376): This Act contains numerous provisions related to water pollution. The most important provisions related to grazing are probably those relating to non-point sources. (33 U.S.C. s. 1288) Non-point pollution occurs from activities such as logging, grazing, or road-building and differs from point source pollution such as that coming out of the discharge pipe of a factory or sewage treatment plant. Non-point pollution is supposed to be controlled by the adoption of area-wide water



quality management plans (called Section 208 Plans, after the section of the Act that requires them) and the adoption of Best Management Practices (BMPs) governing activities that are responsible for non-point pollution. Unfortunately, preventing water pollution from non-point sources such as grazing has proven to be a difficult problem to address.

In addition to acts passed by Congress the legal framework for making grazing decisions on the National Forests includes Federal court cases and regulations adopted by the Forest Service as well as other administrative agencies. These are discussed below.

## **B. Federal Court Cases**

A few of the key court cases relating to grazing decisions on National Forests are summarized below. For a more detailed discussion of applicable court cases, refer to the legal memorandum in the Appendix F. Once again, you don't need to know all about these cases before you get started monitoring grazing decisions, but sometimes it is comforting to know what our federal courts have said about grazing on the National Forests--particularly since it is often more enlightened than the prevailing sentiment in a small town or rural area, where many of you may live. Also, this list of court cases, while not complete, will be useful to any attorney whose help you are soliciting.

If you've never looked up a court case before, don't worry, it's really not that difficult. The decisions of key courts are collected in volumes usually referred to as "court reporters." For Federal Courts, the key reporters are as follows:

- F. Supp.--the reporter for U.S. District Courts
- F. or F. 2d--the reporter for U.S. Appeals Court
- U.S.--the reporter for the U.S. Supreme Court

Typically, Appeals Court decisions carry more weight than District Court decisions and Supreme Court decisions carry more weight than Appeals Court decisions. While it is often helpful to read court decisions for yourself, we urge you to seek the help of a qualified lawyer before relying heavily on court decisions in your work.

Key court cases related to grazing on the National Forests are as follows.

1903-Dastervignes v. United States (122 F. 30 (9th Cir.) 1903): The 9th Circuit Court stated that rules and regulations governing grazing do not unjustly or illegally discriminate against the owners of livestock (in this case sheep.)

1911-Light v. United States (220 U.S. 523 (1911)): The Supreme Court emphasized that grazing on federal lands does not "confer any vested right...nor deprive the United States of the power of recalling any implied license under which the land had been used for private purposes."



1918-Omaechevarria v. Idaho (246 U.S. 343 (1918)): The Supreme Court reiterated that grazing livestock on public lands is not a right, but rather that the "government has merely suffered the lands to be so used." Therefore, the Supreme Court concluded that the Secretary of Agriculture had the right to exclude sheep and cattle from the forest reserves.

1944-Osborne v. United States (145 F. 2d 892 (1944)): The Circuit Court stated that the use of public lands for stock grazing is "a privilege which is withdrawable at any time for any use by the sovereign without the payment of compensation."

1983-Swim v. Bergland (696 F. 2d 712 (1983)): The appeals court quoted Osborne (the 1944 case cited above) about grazing on public lands being a privilege which is withdrawable at any time for any use without compensation.

These court cases make it clear that grazing on National Forests is a privilege and not a right, and that a reduction or revocation of a permit is NOT a "taking" under the Fifth Amendment of the Constitution and does not require compensation (as sometimes argued by grazing permittees.)

## **C. Regulations**

When Congress passes a law, it often authorizes the agency involved to adopt regulations to implement the law. These regulations are gathered together (codified) in the Code of Federal Regulations--cited below as the C.F.R.. These regulations have the force of law and there are a number of them which will probably become important in your monitoring of grazing decisions on the National Forests. Once again, you'll probably find that these regulations are quite easy to look up. If you have any questions, ASK THE LIBRARIAN--that's what librarians are trained for!

### **1. National Environmental Policy Act Regulations**

The National Environmental Policy Act (NEPA) of 1969 (discussed under "Laws" above) requires agencies to consider environmental effects and alternative actions before undertaking major federal actions. The Council on Environmental Quality (CEQ), has adopted regulations governing how this should be done. (40 C.F.R. Parts 1500-1508) These regulations apply to a wide variety of federal agencies, including the Forest Service.

There are three general levels of analysis under NEPA and the CEQ regulations. They are:

-Categorical Exclusion: An action is often "categorically excluded" from environmental analysis if the federal agency has previously determined it has no significant environmental impact. You will probably want to check with the National Forest you are working with to determine which actions related to livestock grazing are categorically excluded from further environmental analysis. It is worth noting that even some actions that may be normally



covered by a categorical exclusion must be analyzed if their potential effects are serious enough.

-Environmental Assessment: An Environmental Assessment (EA) is prepared to determine whether or not an action would significantly affect the environment and therefore require an Environmental Impact Statement (EIS). According to 40 C.F.R. s. 1508.9, an Environmental Assessment should include a discussion of the need for the proposal, the alternatives considered and the environmental effects of the proposed action and alternatives. If the agency determines that in its view the action would not significantly affect the environment, it issues a "Finding of No Significant Impact" (FONSI), which means they do not plan to do an environmental impact statement. (Of course there are numerous court cases brought under NEPA in which an agency's decision not to issue an EIS was reversed by the court and an EIS was ultimately prepared. A discussion of these cases would--and does-- fill several good-sized law textbooks and is beyond the scope of this Handbook.)

-Environmental Impact Statement (EIS): An EIS is a more detailed analysis of the proposed federal action and the alternatives. There are detailed requirements for the content of and process used to adopt an EIS in 40 C.F.R. Part 1502. Once again there are numerous court cases interpreting what is actually required by these regulations.

On the National Forest that the authors have worked most with, decisions about grazing Allotment Management Plans are routinely analyzed in an Environmental Assessment and then a decision is issued with a Finding of No Significant Impact (FONSI). You will probably want to determine what level of environmental analysis is given to decisions about grazing management on the National Forest you are working with.

As this Handbook is going through its final editing, the authors have learned that on the Beaverhead National Forest in southwestern Montana a Draft EIS was prepared and issued in December 1990 for the Upper Ruby Grazing Allotment on the Sheridan Ranger District. The preparation of a full EIS on an Allotment Management Plan represents an important precedent for other activists to learn from.

## **2. National Forest Range Regulations**

The regulations governing grazing and livestock use on the National Forests are found in 36 C.F.R. Part 222, especially Subpart A. A copy of the 1990 version of these regulations is included as Appendix J of this Handbook. Among other things, these regulations specify that

- "Grazing permits and livestock use permits convey no right, title, or interest held by the United States in any lands or resources." (36 C.F.R. s.222.3 (b))

- The Chief of the Forest service is authorized to cancel permits when lands grazed under the permit are to be devoted to another public purpose. (36 C.F.R. s. 222.4 (a)(1))



A review of the National Forest Range Management Regulations will give you a sense for what the regulations demand of both the permittees who graze on National Forests and the National Forest personnel who regulate this grazing.

### 3. National Forest Planning Regulations

After the National Forest Management Act (NFMA) was passed in 1976 (See the Section on "Laws" above), a Committee of Scientists (COS) was convened to provide advice to the Secretary of the Department of Agriculture on regulations to be adopted by the Department of Agriculture to implement the provisions of NFMA. Final planning regulations were adopted in 1979 and amended in 1982. The regulations governing the land management planning mandated by NFMA are found in 36 C.F.R. Part 219.

The key provisions of the planning regulations with respect to range management are found in 36 C.F.R. s. 219.20. These regulations, are found in Appendix K. While the first 10-year plan for your National Forest is probably already completed, it is probably worth comparing the requirements of 36 C.F.R. s. 219.20 with the provisions of your Forest Plan--if nothing else in order to begin preparing for the next round of Forest planning.

In addition, the authors of this Handbook urge you to focus on the suitability provisions of the planning regulations. The regulations specify that, "In forest planning, the suitability and potential capability of National Forest System lands for producing forage for grazing animals and for providing habitat for management indicator species shall be determined..." (36 C.F.R. s. 219.20). The definition for suitability is given in 36 C.F.R. s.219.3. This definition is included in Appendix K, and states

"Suitability: The appropriateness of applying certain resource management practices to a particular area of land, as determined by an analysis of the economic and environmental consequences and the alternative uses foregone. A unit of land may be suitable for a variety of individual or combined management practices." (36 C.F.R. s.219.3)

The question of grazing suitability has been a major component of the Prescott National Forest Friends' effort to reform grazing management on the Prescott National Forest. On the Prescott National Forest over 90% of the Forest is managed for grazing under the allotment system. Moreover, the only suitability analysis used in adopting the Forest Plan was to specify that at least 95% of the Forest continue to be managed for grazing. It is the Prescott National Forest Friends' contention that managing close to 100% of the Forest for grazing probably does not make sense now--if it ever did-- and, more importantly, doesn't comply with the suitability requirements of the planning regulations! What is needed is a suitability analysis of National Forest lands for livestock grazing considering "economic and environmental consequences and the alternative uses foregone." (36 C.F.R. s. 219.20)



The lack of a suitability analysis one of the major issues in the appeal of the Prescott National Forest Plan which at the time this Handbook was prepared was awaiting a decision from the Chief of the Forest Service. (The Statement of Reasons for the appeal of the Prescott National Forest Plan contains a number of arguments related to grazing. These arguments were prepared by the Denver office of the Sierra Club Legal Defense Fund. If you'd like more information, contact the authors of this Handbook.)

In addition, the Prescott National Forest Friends reached a tentative agreement with the Prescott National Forest in May 1990 on a way to assess the suitability of lands on the Prescott National Forest for grazing. Seeing that grazing decisions on the Prescott National Forest use this suitability analysis is presently a major effort of the Prescott National Forest Friends.

While progress is slow, the authors believe that one of the keys to minimizing the negative effects of livestock grazing is to first consider which, if any, National Forest lands are "suitable" for grazing, considering "economic and environmental consequences and alternative uses foregone." The authors urge activists on other National Forests to focus on the suitability issue.

#### **4. National Forest Appeal Regulations**

The Forest Service has an internal process for allowing persons and organizations who disagree with Forest Service decisions to appeal them to a higher level within the agency. This appeal process was substantially revised and new regulations issued in early 1989. The regulations grazing activists are most likely to use are found in 36 C.F.R. Part 217. A copy of the Part 217 regulations is included in Appendix L. (There is another appeal process for use by those who have business relationships with the Forest Service--e.g. special use permittees. The regulations for these sorts of appeals are found in 36 C.F.R. Part 251.)

The Wilderness Society has prepared an excellent handbook entitled, "How to Appeal Forest Service Decisions: A Citizen handbook on the 1989 Appeals Regulations." This Handbook describes the regulations and the authors strongly urge individuals who think they may be appealing a Forest Service decision to obtain a copy of the Handbook and review it carefully. There are strict requirements about time periods and the components of notices of appeals that have to be carefully followed. These are well described in The Wilderness Society Handbook.

#### **D. Manuals and Handbooks**

As mentioned above, the Forest Service has Manuals and Handbooks which attempt to put the various laws and regulations they operate under into a usable form for their personnel. In general, Manuals use slightly more legalistic language while the Handbooks attempt to describe in very practical terms how Forest Service personnel should go about their jobs on a day-to-day



basis. In particular, there are Manuals and Handbooks on Permit Administration and Range Analysis. You will probably want to ask your local Forest Service to see these Manuals and Handbooks and they may even be able to give you extra copies of the Handbooks.

## **E. The Forest Plan**

The "Forest Plan" is described above under "Getting Started" as well as under the National Forest Management Act portion of the Section above on "Laws". The Forest Plan for the National Forest you are working with probably contains a number of provisions related to grazing management. You will want to review these as part of your understanding of the legal context in which grazing decisions are made.

## **F. Summary**

In the century since the Forest Reserves were first established, there have been a number of laws adopted that regulate grazing on the National Forests. These laws have led to the adoption of regulations by the Department of Agriculture (the "parent" Department of the Forest Service) and a number of court cases have discussed the nature of the laws and regulations governing grazing on the National Forests. One of the key concepts running through all of these laws, regulations and court cases is that grazing livestock on the National Forests is a privilege and not a right. Moreover, the Department of Agriculture has substantial authority to regulate livestock grazing on the National Forests and the public has a right to be involved in grazing-related decisions.



## Part III

# Opportunities for Public Involvement

From a review of the legal context in which decisions are made about the management of grazing in National Forests it should be clear that there are a number of ways in which interested members of the public can be involved in grazing management decisions. A few of the key ways are summarized below.

### A. National Forest Plans

While chances are, the Forest Plan for the National Forest you are working with has already been finalized, it is worth becoming familiar with the National Forest Management Act (NFMA) and the Forest Planning regulations described above. Even if your Forest has already adopted its first 10-year plan under the NFMA, you may be able to be involved in one or more of the following ways:

- Implementation of the Plan: You will want to review your Forest Plan for provisions related to livestock grazing and then work with your local Forest Service personnel to ensure that these provisions are implemented. These provisions might refer to the adoption of a certain number of Allotment Management Plans or to the implementation of certain management practices in key parts of the Forest. Direction from the Washington Office (WO) of the Forest Service on bringing livestock grazing permits in line with the Forest Plans is included in Appendix M.

- Amendment of the Plan: If you can convince your Forest that the Plan is inadequate with respect to its livestock grazing provisions, you may be able to work with your National Forest to develop and adopt an amendment to the National Forest Plan.

- Gathering Data for the Next Round of Forest Planning: After reviewing the livestock grazing situation on your Forest, you will probably be able to identify information and data that should be gathered in preparation for the next round of Forest Planning. You should work with your local Forest Service personnel to ensure that the necessary data and information are being gathered now so that it will be available when it is time to rewrite the Forest Plan, probably sometime in the 1990s.

### B. Allotment Management Planning

Many National Forests are working to ensure that grazing allotments are managed in accordance with Allotment Management Plans (AMPs). Where no AMP exists, many Forests are working to develop AMPs; where an AMP exists, the Forest is often working to ensure the AMP is being followed. You



will probably want to check on whether the allotment you are interested in has an AMP or not and if not, when one will be developed.

During the development of an AMP, a Forest should follow the environmental analysis requirements of the National Environmental Policy Act (NEPA) and its implementing regulations, described above in Part II. These legal requirements include provisions for public involvement and you should discuss what public involvement procedures your National Forest intends to use during AMP development. If they seem to be inadequate you should seek help from higher up within the Forest Service, from the Public Lands Action Network (PLAN), or from another national environmental organization.

Some Forests may use a Forest Service process referred to as Integrated Resource Management (IRM). This is a 13 step process designed to ensure that the provisions of the National Forest Management Act and the National Environmental Policy Act are followed. If your Forest is using the IRM process, you should ask for an explanation of the process and when public involvement will be allowed or solicited. For example, the Prescott National Forest Friends has worked out an agreement with the Prescott National Forest in which the Forest will initiate contact with the public at the following stages of analysis of an AMP or other project:

- When the AMP or project is initiated;
- When a feasibility report on the AMP or project is completed;
- When the Forest is in the process of finalizing possible action alternatives; and
- When a final decision is issued.

You may wish to work toward a similar agreement with the National Forest you are working with.

### C. Project Planning

In addition to the planning and analysis that should accompany the development of an AMP or full Forest Plan, the Forest Service should undertake an analysis of environmental effects before carrying out many types of projects on the allotment you are interested in. Examples of projects that the Forest Service might undertake on an allotment include an effort to control a certain type of vegetation or allow control of a certain type of predator.

The level of analysis for project planning will probably depend on the level of analysis the project received at an earlier stage such as in a Forest Plan or Allotment Management Plan. If you feel, however, that the level of analysis is inadequate, you should make your views known to the Forest Service. As always, if you disagree with a decision issued by a Forest Service official, due either to the substance of the decision or to the process used to make the decision, you have the right to appeal the decision. For a discussion of the appeal regulations, see the Section on Regulations above.



## D. Wilderness Management Plans

Many National Forests contain Congressionally-designated wilderness areas and are presently adopting wilderness management plans for these areas. One of the issues that should be considered in these wilderness management plans is the environmental effect of livestock grazing since the legislation authorizing the establishment of wilderness areas specifically allowed grazing to take place in wilderness areas.

While we don't have any personal experience with addressing grazing impacts in a Wilderness Management Plan, the authors are aware of at least one Wilderness Management Plan that has been appealed for failure to assess the impacts of livestock grazing in the wilderness. In the Lassen National Forest in California, the California Wilderness Coalition, based in Davis, California, and the Friends of the River, based in Sacramento, California, appealed the September 1989 decision of the Forest Supervisor to approve the Ishi Wilderness Management Plan because, "it allows for continued cattle grazing at present levels and the Forest Service has not undertaken an adequate study to determine objectively the impacts (past, present and future) of this level of grazing in the Ishi Wilderness." (Emphasis in the original.) The appeal requests that the impacts of livestock grazing be documented and states that, "Once impacts are documented, a level of grazing can be proposed which will truly have 'no significant impact', otherwise an EIS is required."

The Reviewing Officer for the Pacific Southwest Region agreed that not enough was known about the effects of livestock grazing in the wilderness and in March 1990 remanded the decision back to the Lassen National Forest Supervisor to:

- "Develop specific management objectives and directions for managing livestock grazing in wilderness to prevent degradation and protect wilderness values..., " and

- "Incorporate in the [Wilderness Implementation Plan] the kinds of information to be collected on grazing impacts on wilderness resources...."

As a result, the Wilderness Management Plan is back under study by the Lassen National Forest.

## E. Other Grazing Related Decisions

It seems to the authors of this Handbook, that there should be opportunities for public involvement in at least two other crucial decision points related to grazing management on National Forests, although we have not been personally involved in either one. Nonetheless, it appears to the authors that there may be opportunities for public involvement at the following decision points:

- When an Annual Operating Plan is Determined: Typically, at the end of the year, the Forest Service meets with each of its grazing permittees to establish an Annual Operating Plan for the coming year for that permittee.



Subjects such as how many cattle to run and which pastures to use are discussed. While the authors of this Handbook have not yet been involved in any of these Annual Operating Plan discussions, it appears that there may be times and places when public involvement is appropriate.

-When a Grazing Permit Changes Hands: When one grazing permittee sells some or all of his or her private base property and livestock to a subsequent permittee, it appears that the Forest Service automatically transfers the grazing permit from the original permittee to the new permittee. Actually, it is the authors' understanding that the original permittee waives his or her permit back to the Forest Service and then the Forest Service reissues the permit to the new owner of the base property and livestock. Nonetheless, it appears to the authors that there may be times when the automatic transfer of the permit is not appropriate--e.g. if a suitability analysis calls into question whether the allotment under question is suitable for livestock grazing.

If you have been involved at either of these decision points or in other grazing related decision points we urge you to share your experience with the Public Lands Action Network (PLAN) and the authors of this Handbook so that others may learn from your experience.



## PART IV

### Important Objectives

The objectives to work for in grazing-related decisions will vary tremendously depending on which region of the country you are working in. Indeed, the authors have found that the objectives to work for vary dramatically from District to District within a single Forest as well as from allotment to allotment and even from pasture to pasture within a single allotment. To determine which objectives you should be working for, you'll just have to get to know your area and the particular allotment you are working on. This Part of the Handbook is an effort to get you started thinking about the kinds of objectives you might strive for.

#### A. Analyzing Grazing Suitability

The concept of grazing suitability was discussed above under the topic of "Planning Regulations." Analyzing suitability for livestock grazing follows from the requirements of the National Forest Management Act (NFMA) (Section 6 (g) (2)) and the planning regulations adopted under the Act (36 C.F.R. Part 219, especially s. 219.20--see Appendix K). The authors urge you to call these requirements to the attention of the National Forest you are working with and to ask them to conduct a suitability analysis before even beginning a new Allotment Management Plan.

As discussed under "Planning Regulations," the definition of suitability includes a consideration of "environmental and economic consequences and alternative uses foregone." The authors urge you to work with your local Forest to develop a method for assessing grazing suitability in light of this definition. The preliminary agreement between the Prescott National Forest Friends and the Prescott National Forest involves a consideration of relative productivity of the lands and the marginal costs of managing for livestock grazing, followed by a consideration of other uses of the allotment. If you'd like more information on this method of suitability analysis, contact the authors of the Handbook.

Ideally, a grazing suitability analysis should be done Forest-wide, but if you cannot reach an agreement with your National Forest to do a Forest-wide suitability analysis, the authors urge you to work for allotment-by-allotment suitability analyses for use in preparation of Allotment Management Plans and in anticipation of the next round of Forest planning under the NFMA.



Once a suitability analysis has been completed indicating the areas of the allotment that are most suitable and least suitable for livestock grazing, the analysis can be used as a guide during allotment planning. For example, planning for major investments in areas that are least suitable for livestock grazing probably doesn't make sense. It is also the authors' belief that in the long run the suitability analyses can be used by the Forest to rationally determine which parts of the Forest, if any, should be managed for livestock grazing.

## **B. Improving Riparian Condition**

Riparian areas are generally defined as the vegetation, habitats or ecosystems that are associated with bodies of water (e.g. lakes or streams) or the existence of surface or subsurface water drainage. Due to the presence of water and the vegetation that depends on it, riparian areas are typically critical areas for a large variety of wildlife. A number of the references in the Bibliography discuss the importance and management of riparian areas.

One of the objectives you will probably want to work for on your allotment is to improve the condition of riparian areas on the allotment. If the riparian areas on your allotment are already in excellent condition, you'll of course want to work for the maintenance of this condition.

To determine the condition of riparian areas on your allotment, you can try asking Forest Service personnel. They may have an assessment of riparian condition. If they don't have a formal assessment, try to gain the trust of the wildlife biologist or the hydrologist most familiar with the allotment and learn what they know. Also, look for help from local scientists or game managers and try to compare what you see on your allotment with what you see in similar ungrazed riparian areas on or off the Forest.

In general, grazing often reduces the amount of vegetation in riparian areas and in conjunction with poor watershed condition (see below), leads to changes in stream channels and streambanks. While the scientific literature discusses the many possibilities of change, in the Southwest where the authors live, these changes typically lead to broad, wide, barren (or almost barren) stream channels. Yet, ungrazed riparian areas in the same area have narrow, well-defined channels with lots of grasses, trees of all ages and accumulations of sticks, logs and other organic debris. In general, these are attributes of a healthy riparian area--one that can handle high flows without major changes in the stream channel or stream banks. The combination of vegetation and organic debris help to slow down and dissipate the energy of high flows without degrading the streambanks and uprooting vegetation. The bibliography contains references to a number of studies that discuss this phenomenon in more scientific terms. In order to learn what objectives to work for on your allotment, you will probably want to study the sources in the bibliography and talk with scientists who understand the riparian areas (and watershed conditions) of your region.



## C. Improving Watershed Condition

Watershed condition is usually closely tied to riparian condition, as discussed above. It is often difficult to have a truly healthy riparian area without a healthy watershed. As with riparian areas, you will probably want to begin a study of watershed attributes of your region. Once again, you will probably want to review some of the sources in the Bibliography and talk to scientists who are familiar with your region.

In general, a healthy watershed has an adequate amount of cover (e.g. vegetation and organic litter) and a high soil permeability so that precipitation is absorbed and allowed to infiltrate into the soil. Then later, this moisture can be released to increase stream flow during seasons of low precipitation. Conversely, if the protective plant cover is removed and soils become compacted, infiltration is reduced and overland flow is increased. This often leads to soil erosion and destructive flooding. In summary, healthy watersheds are often characterized by reduced flood flows and increased year-round flows.

One of the key objectives you will probably want to work for on your allotment is improved watershed condition. This usually means you will want to improve the amount of plant cover on the allotment so that infiltration will be increased and floods reduced. You can develop specific objectives for your allotment by talking to scientists either in or outside of the Forest Service who understand the attributes of healthy watersheds in your region.

## D. Improving Water Quality

The Forest Service has an obligation to ensure that water quality standards and other provisions of state water quality management programs are not violated as a result of livestock grazing. The Forest Service should gather the needed data to determine the effects of livestock grazing on water quality and then institute the necessary actions to protect water quality. Livestock grazing could affect the following water quality parameters: nitrogen, phosphorous, potassium, dissolved oxygen (DO), biochemical oxygen demand (BOD), total dissolved solids (TDS), total suspended solids (TSS), turbidity, temperature, total coliform bacteria, fecal coliform bacteria, and pH.

You should contact the water pollution control agency for your state to determine what water quality standards apply for any streams (including intermittent and ephemeral streams) on your allotment. In addition, some streams have a special anti-degradation standard that requires water quality to be maintained (even if it is already better than the standards) or improved. These standards, the significance of various water quality parameters and the nature of any grazing Best Management Practices requirements for the state can be explained by the state water quality control personnel.



[Note: This discussion of water quality was taken almost verbatim from the draft handbook being prepared for activists working on BLM lands. THANKS!]

## **E. Improving Wildlife Habitat**

The species of wildlife you will be interested in will depend very much on the nature of your allotment. Indeed, different species of wildlife will probably be of concern on different parts of the same allotment! If you don't already know which species of wildlife are present on your allotment, try to find a good wildlife biologist to help you learn. Oftentimes, if you gain the trust of a wildlife biologist in the Forest Service they will help you understand what wildlife species are present, or potentially present, and what their needs are.

In addition, the game manager for the area may be able to help you understand the needs of wildlife on your allotment. (The game manager for an area is usually attached to the game and fish department for your state. See Appendix D for the addresses and phone numbers of state game departments in the western states.) Sometimes, however, game managers' focus is on "hunnable" wildlife (e.g. deer, elk, antelope) and they may not know that much about other species. Also, university scientists may be of help to you.

Once you've identified the wildlife species whose habitat you'd like to see improved, try to incorporate specific objectives into the Allotment Management Plan and into the monitoring planned for the allotment.

## **F. Managing for Threatened and Endangered Species**

A thorough, on-the-ground inventory for any threatened or endangered (or candidate) species should be conducted on an allotment before any grazing-related decisions are made. To obtain a list of federally designated T & E species for your area, contact the U.S. Fish and Wildlife Service's Regional Office for your area. (See Appendix B) To obtain a list of state-designated endangered, threatened, sensitive or rare species in your area, contact the fish and game department for your state. (See Appendix D)

If grazing is likely to affect a protected species or its habitat, the Forest Service must consult with the U.S. Fish and Wildlife Service. You should contact the Fish and Wildlife Service Office for your Region (See Appendix B) to determine how this should be done.

## **G. Managing for Improved Biodiversity**

Biodiversity can have many meanings, but the biodiversity the authors urge you to promote is the diversity of species and their gene pool. This can be tricky because the Forest Service is fond of saying it is improving biodiversity when it attempts to convert one type of vegetation to another or to create "diversity" in the landscape by clearcutting timber or using herbicides! This effort by the



Forest Service to create ecosystem diversity is often destructive of species and genetic biodiversity. This ecosystem diversity often serves to fragment habitat and according to the principles of island biogeography to make it more difficult for species dependent on large tracts of a climax community to survive. By creating openings in a vegetation type, the Forest Service tends to favor species that are fairly common such as deer, but to disfavor more unique species such as spotted owls or goshawks. Ultimately, the cumulative effects of these actions is to reduce species and genetic diversity, impoverish our natural world and disrupt the wonderfully complex web of life we all depend on. Our public lands are often a last preserve for a variety of species and the authors believe these lands should be managed to maximize the species diversity of a region. If you want help understanding the complexities of the biodiversity issue, try finding a good conservation biologist in your area.

## H. Improving the Range Condition

Improving range condition is sometimes one of the objectives that everyone working on an Allotment Management Plan can agree on--including the permittee. Usually improving range condition will also help improve wildlife habitat, watershed condition and riparian health.

There may be situations, however, where improving range condition will not lead to the objectives you are most interested in. Experience with the needs of wildlife and the attributes of healthy watersheds and riparian areas in your region will help you identify those situations. One thing to be aware of is a heavy dependence on browse (shrub growth) for livestock diet, as browse can be important to deer and other native wildlife.

Even if you determine that improved range conditions will lead to the objectives you are interested in, there may still be disagreement about the fastest, most cost-effective means to achieve the conditions you've agreed on. You might think rest from livestock grazing or seeding are the methods of choice, while others involved with the AMP may believe strongly in improved management and the advantages of animal impact. (For a brief discussion of the concept of animal impact, see Appendix G on Allan Savory and Holistic Resource Management.) All the authors can do at this point --besides wish you luck (!!)-- is to urge you to keep an open mind and to gather technical and public support for the methods you favor.

## I. Balancing Grazing Use with Capacity

Balancing grazing use with grazing capacity appears to be one of those things that should be done before anything else in managing grazing of public lands, but the authors have found that it is one of the most difficult things to achieve primarily because of **extreme pressure from permittees to maintain high numbers of permitted animals.**



[When a permittee decides to sell some of his or her base property, the base property is often worth more or less depending on the number of head of livestock allowed to graze Forest Service land under the permit that has been associated with the base property. The authors have been told that in Arizona, this is usually between \$1,000 to \$2,000 per head. The permittee believes therefore, that a cut in permit numbers will automatically reduce the resale value of the base property. This whole system of resale of base property and the assumed automatic transfer of permits is an area that the authors believe should be reformed, but in the meantime, it makes it very difficult to get a rational decision on the number of permitted livestock!]

The first step in balancing grazing use with grazing capacity is determining the grazing capacity of the allotment. One of the Forest Service's professed ways of determining grazing capacity is through a Production/Utilization (P/U) survey. The concept behind a "P/U" study is to compare the amount of forage actually utilized with the amount of forage that is supposed to be utilized by the livestock grazing on the allotment. The amount of forage that is supposed to be used by the livestock is termed the "allowable use" and is supposed to be determined by the Forest Service depending on a number of factors including the type of forage available, the needs of wildlife and the season of use. Then, the actual amount of forage used is compared to the specified allowable use.

For example the allowable use of forage may be 35%, but the actual use is closer to 70% of the available forage. This would indicate that the grazing capacity is actually half of the existing number of grazing animals. In theory, this should lead to a cut in the number of permitted animals of one-half of the original numbers. **In practice, the authors have never seen a production/utilization study done on an allotment and the results used in the fashion envisioned by the Forest Service Handbook.** (On the National Forest that the authors are most involved with, permitted numbers are typically left unchanged in the hopes that improved management (e.g. more fences, more water developments and moving the cattle more frequently) will support the permitted number of livestock.)

While balancing grazing use with capacity appears to the authors to be a very difficult task, we urge you nonetheless, to keep trying for a balance of grazing use with capacity. Learn how the National Forest you are working with determines grazing capacity and take it from there. The authors and the Public Lands Action Network would very much like to hear about your experiences in this area.

## **J. Establishing a Meaningful Monitoring Plan**

During the development of the Allotment Management Plan, be sure to work for the inclusion of a meaningful monitoring plan. Be sure the following questions are answered.



- What criteria will be used to determine whether the agreed upon objectives are being met?
- How, when and where will these criteria be measured?
- Who will do the measuring and when?
- What records will be kept of the monitoring results and when and where will they be available?
- What decision points are there if the objectives are not being met within the specified time periods?
- What actions will be taken if objectives are not being met?

Work to get these questions answered and establish a written record of the agreements that are made. This becomes particularly important as you follow the allotment in future years. It has been the authors experience that when the focus shifts from developing an Allotment Management Plan (AMP) for one allotment to developing an AMP for another allotment, it is all too easy for the agreements made on the first allotment to get "lost in the shuffle."

## **K. Establishing Points for Future Public Involvement**

As an Allotment Plan starts to become finalized, try to build in mechanisms for future public involvement. For example try to get public involvement in monitoring, in developing the Annual Operating Plan, and if the case should arise, in the transfer of the permit from one permittee to another. While the authors are just beginning to gain some experience in this area, we encourage you to let the Forest Service and the permittee know that you have a long-term interest in the allotment and intend to follow its progress as closely as you can for as long as you can.



## Bibliography

[Needless to say, there have been many, many documents written over the years about livestock grazing on public lands. This bibliography just tries to get you started with some of the more recent documents--particularly those that contain good bibliographies that will help you access the technical literature. If you come across other good documents, please share them with the authors and the Public Lands Action Network.]

- ◆ BAKER, ROBERT D., et. al., "Timeless Heritage: A History of the Forest Service in the Southwest," United States Department of Agriculture (USDA) Forest Service, FS-409 (August 1988)

This history of the National Forests in the Southwest helps you understand the historical framework for management of grazing, as well as the other resources of the National Forests. There are some interesting historical quotes. For example, the permittees around Prescott were quoted in the local paper in 1906 as saying, "There is little but oak brush on the reserves (i.e. National Forests) and to make us pay 35 cents a head for running our cattle there will be a pretty big burden." Sounds like the beginnings of a suitability analysis to us! (p. 94)

- ◆ CHANEY, ED, WAYNE ELMORE AND WILLIAM S. PLATTS, Livestock Grazing on Western Riparian Areas, U. S. Environmental Protection Agency, Washington, D.C. (1990)

This report includes an excellent discussion of riparian functions and values as well as reviewing a number of riparian improvement case studies. It is written for the general public and can be useful in your public education efforts.

- ◆ CLARY, WARREN P. AND BERT F. WEBSTER, Managing Grazing of Riparian Areas in the Intermountain Region, USDA Forest Service, Intermountain Research Station, Ogden, Utah, General Technical Report INT-263 (May 1989)

This is an excellent report prepared by the research arm of the Forest Service. It contains a good bibliography on the effects of grazing on riparian areas and includes a number of key recommendations on managing livestock grazing in riparian areas. For example it recommends that a residual stubble of at least 4 to 6 inches be left in riparian areas after grazing. In addition, it notes that degraded riparian areas may require complete rest (from 1 to 15 years or more!) to initiate recovery of riparian health. These recommendations were developed as suggestions that could be incorporated into State Best Management Practices (BMPs) for the prevention of nonpoint pollution of water.



- ◆ COMMITTEE ON GOVERNMENT OPERATIONS, U.S. HOUSE OF REPRESENTATIVES, Federal Grazing Program: All is Not Well on the Range, United States Government Printing Office, Washington, D.C., (1986)

This report is a bit outdated, but provides good background on public lands grazing issues such as the below-cost grazing fee and the relatively small percentage of livestock producers in the Western states who benefit from public lands grazing permits.

- ◆ DeBANO, LEONARD F. AND LARRY J. SCHMIDT, Improving Southwestern Riparian Areas through Watershed Management, USDA Forest Service, Rocky Mountain Forest and Range Experiment Station, Fort Collins, Colorado (1989)

This is a review of techniques that can be used to rehabilitate and enhance riparian ecosystems and watersheds--but rest from cattle grazing is NOT included!! There is a good discussion of basic concepts related to riparian and watershed health and a good bibliography.

- ◆ FERGUSON, DENZEL AND NANCY, Sacred Cows at the Public Trough, Maverick Publications, Bend, Oregon (1983)

Many grazing activists have "cut their teeth" on this comprehensive treatment of the public lands grazing issue. While the book deals mostly with Bureau of Land Management lands, the basic concepts apply to Forest Service land as well. If you want a general introduction to grazing issues this is a good place to start.

- ◆ GENERAL ACCOUNTING OFFICE, Rangeland Management: More Emphasis Needed on Declining and Overstocked Grazing Allotments, U.S. GAO, Gaithersburg, Maryland RCED-88-80 (1988) (Single copies of GAO reports are available free. Call 1-202-275-6241)

This report primarily cites the agencies' own data without a lot of independent analysis, but provides some basic background information.

- ◆ GENERAL ACCOUNTING OFFICE, Public Rangelands: Some Riparian Areas Restored but Widespread Improvement Will be Slow, U.S. GAO, Gaithersburg, Maryland, RCED 88-105 (1988) (For a free copy call 1-202-275-6241)

This report contains a number of dramatic "before" and "after" pictures of riparian areas and helps illustrate the differences between healthy and unhealthy riparian areas. It is a useful report to have in your collection.

- ◆ JACOBS, LYNN, "Free Our Public Lands,"--a free tabloid available from long-time grazing activist, Lynn Jacobs, P.O. Box 5784, Tucson, AZ 85703



This is an excellent introduction to the issues related to livestock grazing on public lands with lots of great graphs, tables and photographs. Unfortunately, the sources of the statistics are not given, but hopefully these will be included in a book Lynn is presently working on.

- ◆ JOYCE, LINDA A., An Analysis of the Range Forage Situation in the United States: 1989-2040--A Technical Document Supporting the 1989 USDA Forest Service RPA Assessment, USDA Forest Service, Rocky Mountain Forest and Range Experiment Station, Fort Collins, Colorado, General Technical Report RM-180 (1989)

While this report tends to present the standard Forest Service dogma, it contains a bibliography and some basic background information that can be helpful.

- ◆ JOHNSON, AUBREY STEPHEN, "The Thin Green Line: Riparian Corridors and Endangered Species in Arizona and New Mexico," in Preserving Communities and Corridors, Defenders of Wildlife, Washington, D.C. (1989)

This is an excellent review of the relationship between riparian areas and threatened and endangered species' habitat. It concludes that in Arizona, 81 of Arizona's 115 threatened vertebrate species are either closely associated with or completely dependent on riparian habitat. In New Mexico, 69 of the 94 threatened vertebrate species are either closely associated with or completely dependent upon riparian habitat. Maps show the location of rare and endangered species and riparian habitats in the two states.

- ◆ LUOMA, JON R., "Discouraging Words," Audubon, (September 1986)

This is an excellent summary of the public lands grazing issue and, unfortunately, still quite accurate today.

- ◆ MARSTON, ED, "Rocks and Hard Places: Forest Ranger Don Oman, The Nice Guy Who Finished First. This Time.," Wilderness p. 38 (Spring 1991)

This is a heartening story of a Forest Service District Ranger on the Sawtooth National Forest in Idaho who has managed to both start doing something about the problems of livestock grazing on National Forests AND managed to hold onto his job! In the past, Forest Service employees who tried to really do something about grazing problems often found themselves "removed from the scene," one way or the other! The article is written by Ed Marston, publisher of High Country News, an excellent weekly newspaper out of Paonia, Colorado that gives good coverage of grazing issues.



- ◆ NOWAKOWSKI, NANCY A., PETER F. FFOLLIOTT, AND DAVID R. PATTON, Run Wild: Wildlife/Habitat Relationships--Livestock-Wildlife Interactions in the Southwest, USDA Forest Service Southwestern Region, Wildlife Unit Technical Report (1982)

While a little outdated, this report contains an excellent bibliography and review of the interactions (mostly negative) between livestock grazing and wildlife, species by species.

- ◆ ROWLEY, WILLIAM D., U.S. Forest Service Grazing and Rangelands: A History, Texas A&M University Press, College Station, Texas ( 1985)

This book gives a good historical perspective on the efforts to reform grazing practices on the National Forests. It helps you understand the difficulties faced by employees within the Forest Service who are sincerely interested in improving the condition of the western rangelands.

- ◆ STRICKLAND, ROSE, "Taking the Bull by the Horns," Sierra, p.46 (September/October 1990)

An excellent article by a long time grazing activist which will help you understand the frustrations faced by those who have tried to reform grazing practices in the past.

- ◆ SZARO, ROBERT C., "Riparian Forest and Scrubland Community Types of Arizona and New Mexico," Desert Plants Vol. 9, Nos.3-4 (1989)

In addition to classifying riparian community types in Arizona and New Mexico, this extensive research report includes an excellent review of the literature on livestock grazing and riparian areas.

- ◆ WAGNER, FREDERICK H., "Livestock Grazing and the Livestock Industry," in Wildlife and America, Council on Environmental Quality, Washington, D.C. (1978)

This chapter in a CEQ document provides a thorough discussion of the relationship between livestock grazing and wildlife populations, particularly big-game species. It is well documented.

- ◆ THE WILDERNESS SOCIETY, How to Appeal Forest Service Decisions: A Citizen Handbook on the 1989 Appeals Regulations, The Wilderness Society, Washington, D.C. (undated)

This is an excellent handbook on the Forest Service appeals process. Be sure to consult it if you are considering an appeal.



- ◆ WILKINSON, CHARLES F. AND H. MICHAEL ANDERSON, "Land and Resource Planning in the National Forests," Oregon Law Review, Vol. 64, No. 1&2 (1985)

This 373 page "article" covers all aspects of National Forest planning. It provides excellent background legal information on grazing as well as on all of the resources of the National Forests.

- ◆ WUERTHNER, GEORGE, "The Price is Wrong," Sierra, p. 38 (September/October 1990)

This article by a former botanist with the Bureau of Land Management gives a good introduction to the many costs of livestock grazing on public lands.

- ◆ WUERTHNER, GEORGE, "How the West was Eaten," Wilderness, p.28 (Spring 1991)

Another great article by George Wuerthner with fine pictures and telling quotes from some federal land managers.



## APPENDIX A

### Forest Service Regions and Experiment Stations

If you are not sure how to contact the National Forest you are interested in, call or write the Regional Office that covers the state that contains the National Forest and ask them for the address and phone number of the National Forest you are interested in.

#### REGION 1-NORTHERN (ID,MT,ND)

Federal Building  
200 East Broadway Street  
P.O. Box 7669  
Missoula, MT 59807  
406-329-3511

#### REGION 6-PACIFIC NORTHWEST (OR,WA)

319 SW Pine Street  
P.O. Box 3623  
Portland, OR 97208  
503-221-2877

#### REGION 2-ROCKY MOUNTAIN (CO,NE,SD,WY)

11177 West Eighth Avenue  
P.O. Box 25127  
Lakewood, CO 80225  
303-236-9431

#### REGION 8-SOUTHERN (AL,AR,FL,GA,KY,LA,MS,NC,SC,T N,TX,VA)

1720 Peachtree Rd NW  
Atlanta, GA 30367  
404-347-4191

#### REGION 3-SOUTHWESTERN (AZ, NM)

Federal Building  
517 Gold Ave. SW  
Albuquerque, NM 87102  
505-842-3292

#### REGION 9--EASTERN (IL,IN,MI,MN,MO,NH,PA,VT,WV, WI)

310 West Wisconsin Ave., Room 500  
Milwaukee, WI 53203  
414-297-3693

#### REGION 4-INTERMOUNTAIN (ID,NV,UT,WY)

Federal Building  
324 25th Street  
Ogden, UT 84401  
801-625-5354

#### REGION 10-ALASKA (AK)

Federal Office Building  
709 West Ninth Street  
P.O. Box 21628  
Juneau, AK 99802  
907-586-8863

#### REGION 5-PACIFIC SOUTHWEST (CALIFORNIA)

630 Sansome Street  
San Francisco, CA 94111  
415-705-2874



## FOREST AND RANGE EXPERIMENT STATIONS

The Forest and Range Experiment Stations conduct research on a variety of questions related to National Forest management, including range-related questions. You may try contacting the Experiment Station for your area as you search for technical information related to the area you are working in.

Intermountain Forest and Range  
Experiment Station  
324 25th Street  
Ogden, UT 84401  
801-625-5412

North Central Forest Experiment  
Station  
1992 Folwell Avenue  
St. Paul, MN 55108  
612-649-5000

Northeastern Forest Experiment  
Station  
370 Reed Rd.  
Broomall, PA 19008  
215-690-3104

Pacific Northwest Forest and Range  
Experiment Station  
319 SW Pine Street  
P.O. Box 3890  
Portland, OR 97208  
503-423-7131

Pacific Southwest Forest and Range  
Experiment Station  
1960 Addison Street  
Berkeley, CA 94704  
415-449-3615

Rocky Mountain Forest and Range  
Experiment Station  
240 West Prospect Road  
Fort Collins, CO 80526  
303-498-1100

Southeastern Forest Experiment  
Station  
200 Weaver Boulevard  
P.O. Box 2680  
Asheville, NC 28802  
704-257-4390

Southern Forest Experiment Station  
U.S. Postal Service Building  
701 Loyola Avenue  
New Orleans, LA 70113  
504-589-6800

Forest Products Laboratory  
One Gifford Pinchot Drive  
Madison, WI 53705  
608-264-5600

### THE WASHINGTON OFFICE

In case you need it, here's the  
address and phone number of the  
Washington Office of the Forest  
Service....

United States Forest Service  
Washington Office  
12th Street and Independence Avenue  
SW  
P.O. Box 96090  
Washington, DC 20090  
202-447-3957



## APPENDIX B

### Fish and Wildlife Service Regions

To get in touch with the United States Fish and Wildlife Service (USFWS) personnel for your area, look for the Region that contains your state and then contact that Regional Office.

ALBUQUERQUE REGIONAL  
OFFICE  
(Covers AZ, NM, OK, TX)  
P.O. Box 1306  
Albuquerque, NM 87103  
505-766-2321

ANCHORAGE REGIONAL  
OFFICE  
(Covers Alaska)  
1011 E. Tudor Rd.  
Anchorage, AK 99503  
907-786-3542

ATLANTA REGIONAL OFFICE  
(Covers AL, AK, FL, GA, KT, LA,  
MS, NC, SC, TN)  
75 Spring St. SW  
Atlanta, GA 30303  
404-331-3588

BOSTON REGIONAL OFFICE  
(Covers CT, DE, ME, MD, MA, NH,  
NJ, NY, PA, RI, VT, VA, WV)  
Suite 700, 1 Gateway Center  
Newton Corner, MA 02158  
617-965-5100

DENVER REGIONAL OFFICE  
(Covers CO, KS, MT, NE, ND, SD,  
UT, WY)  
P.O. Box 25486  
Denver, CO 80225  
303-236-7920

PORTLAND REGIONAL OFFICE  
(Covers CA, HI, ID, NV, OR, WA)  
Suite 1692, 500 NE. Multnomah St.  
Portland, OR 97232  
503-231-6118

TWIN CITIES REGIONAL OFFICE  
(Covers IL, IN, IA, MI, MN, MS,  
OH, WI)  
Federal Building, Fort Snelling  
Twin Cities, MN 55111  
612-725-3563

WASHINGTON D.C. RESEARCH  
(Covers research facilities  
nationwide)  
1849 C. St. NW.  
Washington, DC 20240  
703-358-1801

WASHINGTON D.C. PUBLIC  
AFFAIRS  
(Covers Public Affairs for the entire  
USFWS)  
Department of the Interior  
Washington, DC 20240  
202-208-5634



## APPENDIX C

### Nature Conservancy State Offices

**EASTERN REGIONAL OFFICE**  
201 Devonshire Street, 5th Floor  
Boston, MA 02110  
(617) 542-1908  
Bruce Runnels, *Vice President*  
Eve Endicott, *Vice President, Special Projects*  
Philip Tabas, *Vice President, Land Protection/Attorney*

**MIDWEST REGIONAL OFFICE**  
1313 Fifth Street, S.E., #314  
Minneapolis, MN 55414  
(612) 379-2207  
Russ Van Herik, *Vice President*

**SOUTHEAST REGIONAL OFFICE**  
P.O. Box 2267  
Chapel Hill, NC 27515-2267  
(919) 967-5493  
Charles Bassett, *Vice President*

**WESTERN REGIONAL OFFICE**  
785 Market Street  
San Francisco, CA 94103  
(415) 777-0541  
Laurel Mayer, *Vice President*

**LATIN AMERICA DIVISION**  
1815 North Lynn Street  
Arlington, VA 22209  
(703) 841-5300  
Geoffrey S. Barnard, *Vice President*

**ALABAMA FIELD OFFICE**  
806D 29th Street, South  
Birmingham, AL 35205  
(205) 933-5153  
Kathy Cooley, *Director*

**ALASKA FIELD OFFICE**  
601 W. Fifth Ave., Suite 550  
Anchorage, AK 99501  
(907) 276-3133  
Susan Ruddy, *Director*

**ARIZONA FIELD OFFICE**  
300 E. University Blvd., Suite 230  
Tucson, AZ 85705  
(602) 622-3861  
Dan Campbell, *Vice President*

**ARKANSAS FIELD OFFICE**  
300 Spring Building, Suite 717  
Little Rock, AR 72201  
(501) 372-2750  
Nancy DeLamar, *Vice President*

**CALIFORNIA FIELD OFFICE**  
785 Market Street  
San Francisco, CA 94103  
(415) 777-0487  
Steve McCormick, *Vice President*

**COLORADO FIELD OFFICE**  
1244 Pine Street  
Boulder, CO 80302  
(303) 444-2950  
Sydney Macy, *Vice President*

**CONNECTICUT CHAPTER**  
55 High Street  
Middletown, CT 06457  
(203) 344-0716  
Les Corey, *Vice President*

**DAKOTAS FIELD OFFICE**  
1014 East Central Avenue  
Bismark, ND 58501  
(701) 222-8464

**DELAWARE FIELD OFFICE**  
319 S. State Street  
Dover, DE 19903  
(302) 674-3550  
Rob McKim, *Field Representative*

**FLORIDA CHAPTER**  
2699 Lee Road  
Suite 500  
Winter Park, FL 32789  
(407) 628-5887  
John Flicker, *Vice President*

**GEORGIA FIELD OFFICE**  
1401 Peachtree Street, N.E.  
Suite 136  
Atlanta, GA 30309  
(404) 873-6946  
Octavia McCuean, *Director*

**GREAT BASIN FIELD OFFICE**  
P.O. Box 11486, Pioneer Station  
Salt Lake City, UT 84147-0486  
(801) 531-0999  
David Livermore, *Vice President*

**HAWAII FIELD OFFICE**  
1116 Smith Street, Suite 201  
Honolulu, HI 96817  
(808) 537-4508  
Kelvin Taketa, *Vice President*,  
Hawaii and Pacific Region Program

**IDAHO FIELD OFFICE**  
P.O. Box 64  
Sun Valley, ID 83353  
(208) 726-3007  
Guy Bonnavier, *Vice President*

**ILLINOIS FIELD OFFICE**  
79 West Monroe Street, Suite 708  
Chicago, IL 60603  
(312) 346-8166  
Albert Pyott, *Director*

**INDIANA FIELD OFFICE**  
1330 W. 38th Street  
Indianapolis, IN 46208  
(317) 923-7547  
Dennis J. McGrath, *Director*

**IOWA FIELD OFFICE**  
431 E. Locust, Suite 200  
Des Moines, IA 50309  
(515) 244-5044  
Gary B. Reiners, *Director*

**KANSAS FIELD OFFICE**  
Southwest Plaza Building  
3601 W. 29th Street  
Suite 112B  
Topeka, KS 66614  
(913) 272-5115  
Alan Pollom, *Director*

**KENTUCKY CHAPTER**  
642 West Main Street  
Lexington, KY 40508  
(606) 259-9655  
Jim Aldrich, *Director*

**LOUISIANA FIELD OFFICE**  
P.O. Box 4125  
Baton Rouge, LA 70821  
(504) 338-1040  
Nancy Jo Craig, *Vice President*

**MAINE CHAPTER**  
122 Main Street  
Topsham, ME 04086  
(207) 729-5181  
J. Mason Morfit, *Vice President*

**MARYLAND FIELD OFFICE**  
Chevy Chase Metro Bldg.  
2 Wisconsin Circle, Suite 410  
Chevy Chase, MD 20815  
(301) 656-8673  
Wayne Klockner, *Director*

**MASSACHUSETTS FIELD OFFICE**  
201 Devonshire Street, 5th Floor  
Boston, MA 02110  
(617) 423-2545  
Laura Johnson, *Vice President*

**MICHIGAN FIELD OFFICE**  
2840 East Grand River, Suite 5  
East Lansing, MI 48823  
(517) 332-1741  
Tom Woivode, *Vice President*

**MINNESOTA FIELD OFFICE**  
1313 Fifth Street, S.E.  
Minneapolis, MN 55414  
(612) 379-2134  
Margaret Kohring, *Vice President*

**MISSISSIPPI FIELD OFFICE**  
P.O. Box 1028  
Jackson, MS 39215-1028  
(601) 355-5357  
Roger Jones, *Director*

**MISSOURI FIELD OFFICE**  
2800 S. Brentwood Blvd.  
St. Louis, MO 63144  
(314) 968-1105  
Rod Miller, *Vice President*

**MONTANA FIELD OFFICE**  
Last Chance Gulch and 6th  
P.O. Box 258  
Helena, MT 59624  
(406) 443-0303  
Brian Kahn, *Director*

**NEBRASKA FIELD OFFICE**  
418 South 10th Street  
Omaha, NE 68102  
(402) 342-0282  
Vincent E. Shay, *Director*

**NEW HAMPSHIRE FIELD OFFICE**  
2 1/2 Beacon Street, Suite 6  
Concord, NH 03301  
(603) 224-5853  
Ed Spencer, *Director*

**NEW JERSEY FIELD OFFICE**  
17 Fairmount Road  
P.O. Box 181  
Pottersville, NJ 07979-0181  
(201) 439-3007  
Elizabeth A. Johnson,  
*Acting Director*

**NEW MEXICO FIELD OFFICE**  
107 Cienega Street  
Santa Fe, NM 87501  
(505) 988-3867  
Bill Waldman, *Director*

**NEW YORK FIELD OFFICE**  
1736 Western Avenue  
Albany, NY 12203  
(518) 869-6959  
Martin Carovano, *Director*

**NEW YORK CHAPTER OFFICES:**  
  
**Adirondack Nature Conservancy**  
P.O. Box 188  
Elizabethtown, NY 12932  
(518) 873-2610  
Timothy Barnett, *Director*

**Central and Western NY Chapters**  
315 Alexander Street, Suite 301  
Rochester, NY 14604  
(716) 546-8030

**Eastern NY Chapter**  
1736 Western Avenue  
Albany, NY 12203  
(518) 869-0453  
Margaret Olsen, *Director*

**Long Island Chapter**  
250 Lawrence Hill Road  
Cold Spring Harbor, NY 11724  
(516) 367-3225  
Andrew Walker, *Director*

**Lower Hudson Chapter**  
223 Katonah Avenue  
Katonah, NY 10536  
(914) 232-9431  
Olivia Millard, *Director*

**South Fork/Shelter Is. Chapter**  
P.O. Box 2694  
Sag Harbor, NY 11963  
(516) 725-2936  
Sara Davison, *Director*

**NORTH CAROLINA FIELD OFFICE**  
Carr Mill Mall, Suite 223  
Carrboro, NC 27510  
(919) 967-7007  
Katherine Skinner, *Vice President*

**OHIO FIELD OFFICE**  
1504 West 1st Avenue  
Columbus, OH 43212  
(614) 486-6789  
Mark Artzner, *Director*

**OKLAHOMA FIELD OFFICE**  
320 South Boston, Suite 1222  
Tulsa, OK 74103  
(918) 585-1117  
Herb Beattie, *Director*

**OREGON FIELD OFFICE**  
1205 N.W. 25th Ave.  
Portland, OR 97210  
(503) 228-9561  
Russell S. Hoeflich, *Vice President*

**PENNSYLVANIA FIELD OFFICE**  
1218 Chestnut St., Suite 807  
Philadelphia, PA 19107  
(215) 925-1065  
Cary Nicholas, *Director*

**RHODE ISLAND FIELD OFFICE**  
240 Hope Street  
Providence, RI 02906  
(401) 331-7110  
Keith Lang, *Director*

**SOUTH CAROLINA FIELD OFFICE**  
P.O. Box 5475  
Columbia, SC 29250  
(803) 254-9049  
Patrick Morgan, *Director*

**TENNESSEE FIELD OFFICE**  
P.O. Box 3017  
Nashville, TN 37219  
(615) 242-1787  
Jeffrey Sinks, *Director*

**TEXAS FIELD OFFICE**  
P.O. Box 1440  
San Antonio, TX 78295-1440  
(512) 224-8774  
David Braun, *Director*

**VERMONT FIELD OFFICE**  
27 State Street  
Montpelier, VT 05602-2934  
(802) 229-4425  
Robert J. Klein, *Vice President*

**VIRGINIA FIELD OFFICE**  
1110 Rose Hill Drive, Suite 200  
Charlottesville, VA 22901  
(804) 295-6106  
George Fenwick, *Vice President*

**WASHINGTON FIELD OFFICE**  
1601 Second Ave., Suite 910  
Seattle, WA 98101  
(206) 728-9696  
Eliot Marks, *Vice President*

**WEST VIRGINIA FIELD OFFICE**  
922 Quarrier Street, Suite 414  
Charleston, WV 25301  
(304) 345-4350  
Mark Scott, *Director*

**WISCONSIN FIELD OFFICE**  
333 West Mifflin, Suite 107  
Madison, WI 53703  
(608) 251-8140  
Peter McKeever, *Director*

**WYOMING FIELD OFFICE**  
258 Main Street  
P.O. Box 450  
Lander, WY 82520  
(307) 332-2971  
Ben Pierce, *Director*



**APPENDIX D**  
**State Game and Fish Departments**  
**for the Western States**

**ALASKA**

Department of Fish and Game  
Capitol Office Park  
P.O. Box 3-2000  
Juneau, AK 99802  
907-465-4100

**ARIZONA**

Game and Fish Department  
2222 W. Greenway Rd.  
Phoenix, AZ 85023  
602-942-3000

**CALIFORNIA**

Department of Fish and Game  
Resources Building, Room 1205  
1416 9th St.  
Sacramento, CA 95814  
9116-445-3535

**COLORADO**

Division of Wildlife, Department of Natural  
Resources  
6060 N. Broadway  
Denver, CO 80216  
303-291-7208

**IDAHO**

Department of Fish and Game  
600 S. Walnut St.  
P.O. Box 25  
Boise, ID 83707  
208-334-3771

**MONTANA**

Department of Fish, Wildlife and Parks  
1420 E. 6th Ave.  
Helena, MT 59620  
406-444-2612

**NEVADA**

Department of Wildlife  
1100 Valley Rd.  
P.O. Box 10678  
Reno, NV 89520  
702-789-0500

**NEW MEXICO**

Department of Game and Fish  
Villagra Building, Room 219  
408 Galisteo St.  
Santa Fe, NM 87503  
505-827-7889

**OREGON**

Department of Fish and Wildlife  
506 SW Mill St.  
P.O. Box 59  
Portland, OR 97207  
503-229-5551

**UTAH**

Division of Wildlife, Department of Natural  
Resources  
1596 W. North Temple St.  
Salt lake City, UT 84116  
801-533-9333

**WASHINGTON**

Department of Wildlife  
600 N. Capitol Way  
Olympia, WA 98501-1091  
206-753-5710

**Department of Fisheries**

General Administration Building, Room 115  
11th Ave. and Columbia St.  
Mail Stop AX-11  
Olympia, WA 98504  
206-753-6623

**WYOMING**

Game and Fish Department  
5400 Bishop Blvd.  
Cheyenne, WY 82002  
307-777-7632



## APPENDIX E

### Supporting Environmental Organizations

Here are the addresses and phone numbers for some environmental organizations that maybe able to give you some support or put you in contact with someone who can.

ASSOCIATION OF FOREST  
SERVICE EMPLOYEES FOR  
ENVIRONMENTAL ETHICS  
(AFSEEE)  
P.O. Box 11615  
Eugene, OR 97440  
503-484-2692

LAND AND WATER FUND  
1405 Arapahoe, Suite 200  
Boulder, CO 80302  
303-444-1188

LIGHTHAWK-THE WINGS OF  
CONSERVATION  
P.O. Box 8163  
Santa Fe, NM 87504  
505-982-9656

NATIONAL WILDLIFE  
FEDERATION  
Public Lands Section  
1400 16th St. NW  
Washington, D.C.  
202-797-6860

NATURAL RESOURCES DEFENSE  
COUNCIL  
San Francisco Office  
71 Stevenson #1825  
San Francisco, CA 94105  
415-777-0220

PUBLIC LANDS ACTION  
NETWORK  
P.O. Box 5631  
Santa Fe, NM 87502-5631  
505-984-1428

SIERRA CLUB  
730 Polk St.  
San Francisco, CA 94109  
415-776-2211

TROUT UNLIMITED  
501 Church St. NE  
Vienna, VA 22180  
703-281-1100

THE WILDERNESS SOCIETY  
800 17th St. NW  
Washington, DC 20006-2596  
202-833-2300



**APPENDIX F**  
**Legal Memo on the Status of Grazing Permits**

United States  
Department of  
Agriculture

Forest  
Service

Washington  
Office

14th & Independence SW  
P.O. Box 96090  
Washington, DC 20090-6090

Reply to: 2230

Date: November 16, 1990

Subject: Legal Status of Grazing Permits

To: Regional Foresters

Enclosed is a memorandum we recently received from James P. Perry, Assistant General Counsel for Natural Resources, Office of the General Counsel (OGC), describing the legal status of grazings permits.

This memo is not considered a legal opinion. We urge you to give this paper widespread distribution within the Forest Service and among external entities that might be interested in it. We feel that it will have special meaning for those individuals who are working on-the-ground in day-to-day grazing permit administration.

We have a companion document to this memo that is considered a legal opinion. If you desire a copy, please let us know--keeping in mind that this is a confidential document and should be treated as such. The enclosed memo, however, should meet your day-to-day needs. The OGC office here in Washington has send copies of both documents to their regional OGC attorneys.

We would like your feedback on the usefulness of this document. Please send us your ideas on how we might improve the document for use by field-level employees.

/s/ Robert M. Williamson

ROBERT M. WILLIAMSON  
Director of Range Management

Enclosure

RWilliamson:gdf:11/16/90:2230

CO:General:OGC



United States  
Department of  
Agriculture

Office of the  
General  
Counsel

Washington,  
D.C.  
20250-1400

C O P Y

To: Robert M. Williamson  
Director of Range Management  
Forest Service

From: James P. Perry  
Assistant General Counsel  
Natural Resources Division

At your request, we have reviewed several areas of current interest to Range Management. This memorandum will address the legal status of grazing permits, address how the U.S. Constitution affects the role state and local governments have in the management of federal lands, and address how the National Environmental Policy Act and the National Forest Management Act affect grazing permits.

I. Legal Status of a Grazing Permit

A. History

For much of the 19th century the federal government was primarily interested in using federal lands as an incentive to encourage development in the western United States. In 1891, however, Congress enacted the Forest Reserves Act (Act of March 3, 1891), evidencing a shift in federal land management policy. Under the Act, certain forest reserves were selected from the remaining federal lands and placed under the control of the Department of the Interior.

The Organic Act of 1897 (16 U.S.C. § 551) gave the Secretary of the Department of the Interior the general power to regulate the forest reserves. Acting pursuant to this regulatory authority, the Department of the Interior began limiting grazing on the forest reserves, and in 1901 installed a permit system regulating all grazing on federal lands. The constitutionality of the enforcement mechanisms under the Interior regulations was challenged in Dastervignes v. United States (122 F. 30 (9th Cir. 1903)).

The court in Dastervignes held the injunctive relief granted the government by the lower court was proper to prevent the "pasturing of sheep and goats on the public lands in the forest reservation." The court turned aside the argument that the Interior regulations were an unconstitutional delegation of legislative authority stating:

The Secretary, by adopting this rule, acted simply as the arm that carries out the legislative will. He did not invade any of the functions of Congress. He did not make any law, but he exercised the authority given to him, and made rules to preserve the forests on the reservations from destruction.



Subsequent to the Transfer Act of 1905 (16 U.S.C 472), the administration of grazing on the forest reserves was controlled by the Department of Agriculture, s newly created Forest Service. Acting under the broad regulatory authority granted in the Organic Act, and in the Transfer Act, the Forest Service imposed fees for grazing permits on the forest reserves for the first time in 1906. The Supreme Court endorsed this practice in United States v. Grimaud (220 U.S. 506 (1911)), holding that the Secretary of Agriculture did have the authority to impose such fees. The Court stated:

In addition to the general power in [the Organic Act], ... [the Transfer Act] clearly indicates that the Secretary was authorized to make charges out of which a revenue from forest resources was expected to arise.

## B. Nature of Legal Interests Created

### 1. Cases

While seemingly settled over the years, the legal status of grazing permits on federal lands has again become the subject of controversy. Federal lands in the West have long been used by cattlegrowers for grazing. In the late nineteenth century the Supreme Court addressed the use of federal lands for grazing purposes in the case of Buford v. Houtz (133 U.S. 320 (1890)). The Court stated:

We are of opinion that there is an implied license, growing out of the custom of nearly a hundred years, that the public lands of the United States, especially those in which the native grasses are adapted to the growth and fattening of domestic animals, shall be free to the people who seek to use them, where they are left open and unclosed, and no act of government forbids this use. (emphasis added.)

While the implied license on federal grazing lands recognized by the Supreme Court in Buford v. Houtz, was enforceable by the licensee (cattlegrower) against third parties, it did not affect the relationship between the government and the licensee. As the Supreme Court emphasized in Light v. United States (220 U.S. 523 (1911)), grazing on federal land does not "confer any vested right ... nor deprive the United States of the power of recalling any implied license under which the land had been used for private purposes."

Similar issues to those presented in Light v. United States arose in the case of Omaechevarria v. Idaho (246 U.S. 343 (1918)), where the Supreme Court stated:

Congress has not conferred upon citizens the right to graze stock upon the public lands. The government has merely suffered the lands to be so used. It is because the citizen possesses no such right that it was held by this court that the Secretary of Agriculture might, in the exercise of his general power to regulate forest reserves, exclude sheep and cattle therefrom. (citations omitted).

In addition, the issue of grazing permit privileges versus property rights has been addressed by the Court of Appeals for the Ninth Circuit in at least two



cases, Osborne v. United States (145 F.2d 892 (1944)), and Swim v. Bergland (696 F.2d 712 (1983)). In each case, the court held that grazing permits are privileges-- not property rights. In Osborne, the court stated:

It is safe to say that it has always been the intention and policy of the government to regard the use of its public lands for stock grazing, either under the original tacit consent or, as to National Forests, under regulation through the permit system, as a privilege which is withdrawable at any time for any use by the sovereign without the payment of compensation, (Osborne, at 896, as cited in Bergland at 719.)

As the cases cited above demonstrate, grazing on the national forests is clearly a privilege. This principle manifests itself throughout the controlling grazing statutes and regulations, as the discussion below indicates.

## ii. Grazing Statutes

### a. Taylor Grazing Act & Granger-Thye

In 1934 Congress enacted the Taylor Grazing Act (43 U.S.C. ( 315)), authorizing grazing districts and the issuance of permits for a maximum duration of 10 years on the public lands controlled by the Department of the Interior. While the Act did not apply to grazing within the national forests, it was an explicit statement by Congress concerning the legal interests generated by grazing activities on federal lands. The Act emphasized that, "the creation of a grazing district or the issuance of a permit pursuant to the provisions shall not create any right, title, interest, or estate in or to the lands." (43 U.S.C ( 315b)).

Pursuant to the Granger-Thye Act of 1950 (16 U.S.C. ( 5801)), the Secretary of Agriculture was specifically authorized by Congress to issue grazing permits for up to 10 years in the course of regulating grazing on the national forests. In accord with the historical development of grazing on federal lands, "Forest Service authority to issue permits under Granger-Thye is limited by the proviso "That nothing herein shall be construed as limiting or restricting any right, title, or interest of the United States in any land or resources."

### b. FLPMA

More recently Congress addressed grazing on federal lands administered by both the Bureau of Land Management (BLM) and the Forest Service. Section 402 of the Federal Land Policy and Management Act (FLPMA) as amended by the Public Rangelands Improvement Act (PRIA) (43 U.S.C. ( 1752, as amended by 92 Stat. 1803 (1978))), gives basic guidelines to the two administering departments for permits and leases. Under FLPMA, the foremost mission of the Forest Service and the BLM is to manage federal lands in the national interest. Thus, only when grazing is consistent with this general public interest is it authorized.



In enacting FLPMA, Congress gave careful thought to the interests a permittee would receive under a permit. Consistent with historical analyses of the grazing permit, Congress has generally granted permittees rights only against another applicant and not against the government. (43 U.S.C. ( 1752(c)).

FLPMA does not affect the character of the grazing permit under the other grazing statutes. As discussed above, the Forest Service is only authorized to issue grazing permits under the Granger-Thye Act. In contrast, BLM is authorized to issue grazing permits and leases under the Taylor Grazing Act. Of significance is the fact that under the Taylor Grazing Act and the Granger-Thye Act, there is limiting language relating to the nature of the legal interest grazing permits create in federal lands (43 U.S.C ( 315b; 16 U.S.C. ( 5801). However, the Taylor Grazing Act contains no similar language pertaining to BLM grazing leases (43 U.S.C. ( 315m).

Under ( 402a of FLPMA (43 U.S.C ( 1752(a)), the Secretary of Agriculture may include in grazing permits whatever terms and conditions he "deems appropriate and consistent with the governing law," and may "cancel, suspend, or modify a grazing permit ..., in whole or in part, pursuant to the terms and conditions thereof." As noted in this discussion previously, this governing law includes numerous land management statutes and case law construing grazing permits as privileges revocable at will for rational reasons. Consistent with this, ( 402h of FLPMA (43 U.S.C ( 1752(h)) states:

Nothing in the act shall be construed as modifying in any way law existing on the date of approval of this Act with respect to the creation of right, title, interest or estate in or to public lands or lands in National Forests by issuance of grazing permits and leases.

Terms presently included in a permit allow for cancellation or modification because of resource conditions, for non-use, violations of numbers, tagging and kind of livestock, changes in qualifications such as base property ownership, livestock ownership and others. (36 CFR ( 222.4 and FSM.2230). In addition, the permit by its terms is nontransferable and nonassignable.

### C. Legal Classification of the Grazing Permit

#### i. Contract

As discussed above, so much authority to modify grazing permits is retained by agencies managing federal lands in this arrangement, that the legal requirements for an enforceable contract cannot be met. The terms of the permit are indefinite. According to Professor Williston:

One of the commonest kind of promises too indefinite for legal enforcement is where the promisor retains an unlimited right to decide later the nature or extent of his performance. This unlimited choice in effect destroys the promise and makes it merely illusory.... Nor will a contract arise from an offer or agreement which by its terms is 'subject to alterations.'  
(Williston on Contracts, (3d ed.) ( 43).



Thus, a grazing permit cannot be labelled a contract in the ordinary sense, because of the vast discretion intentionally preserved the administering agencies.

#### ii. Easement

A grazing permit is also not an easement, in that an easement implies an interest in land which is ordinarily created by a grant and is permanent. This is clearly prohibited by public land statutes blankly stating a grazing permit can create no right, title or interest in federal lands or resources. (16 U.S.C. ( 5801, 43 U.S.C. ( 315b). Furthermore, the government is immune to the establishment of prescriptive easements absent a statute which allows for their creation. (United States v. Osterlund, 505 F.Supp. 165, 168, aff'd, 671 F.2d 1267 (10th Cir. 1981) ("no right of prescription may be obtained against the government"))).

#### iii. Lease

Furthermore, a grazing permit is not a lease because a lease conveys an interest in land, transfers possession, and may be required to be in writing where the period of the lease brings it within the Statute of Frauds. Moreover, the Forest Service has no authority under the Granger-Thye Act or the Taylor Grazing Act to enter into grazing leases (unlike BLM which may issue grazing leases under limited circumstances). (43 U.S.C. ( 315m).

#### iv. License in Real Property

The legal category most accurately describing a grazing permit is a license in real property. It is defined in 25 Am. Jur. 2d Easements and Licenses ( 123 as "a personal, revocable, and unassignable privilege, conferred either by writing or parol, to do one or more acts on land without possessing any interest therein." A distinguishing characteristic of a license in land is that it gives no interest in the land-- thus fitting within the statutory constraints. Consistent with public land law, a license is "an authority to do a lawful act, which, without it, would be unlawful, and, while it remains unrevoked is a justification for the acts which it authorizes to be done." In accordance with legal history, statutes and agency actions:

While every license to do an act on land involves the occupation of the land by the licensee so far as is necessary to do the act, his right does not extend beyond this, for a license must be exercised only in the manner and for the special purpose for which consent was given; if exercised in any other manner, or if the permission given is exceeded, the licensee becomes a trespasser. (25 Am. Jur. 2d Easements and Licenses ( 125).

Thus, a grazing permit is most accurately described as a license in real property. Consistent with the above discussion, the Forest Service range management regulations state: "Grazing permits and livestock use permits convey no right, title, or interest held by the United States in any lands or resources." (36 C.F.R. ( 222.3(b)).



#### D. Fifth Amendment Takings and Grazing Permits

As the above discussion of case law and statutes illustrates, a grazing permit does not create a possessory interest in real property. A grazing permit only authorizes the holder to use the property in some manner. Thus, the reduction or elimination of livestock grazing, pursuant to the exercise of the Secretary of Agriculture's statutory discretion, is not a taking under the Fifth Amendment.

The Fifth Amendment provides that private property shall not be taken for public use without just compensation. However, as the United States Supreme Court has held, the issuance of a grazing permit does not create a compensable property right. In United States v. Fuller (409 U.S. 488, 492 (1973)), the Court stated:

The Government ... may not be required to compensate ... for elements of value that the Government has created, or that it might have destroyed under the exercise of governmental authority .... [I]t would seem a fortiori that it need not compensate for value which it could remove by revocation of a permit for the use of land that it owned outright.

Thus, because a grazing permit confers no property right, there is no compensable injury under the Fifth Amendment for government actions which affect grazing on permitted land.

#### II. Constitutional Issues Raised by Grazing

In recent years, there has been a growing movement in several western states to assert greater control over the management of lands administered by the Forest Service. While public involvement in Forest Service decisionmaking is encouraged under the National Forest Management Act (NFMA), and the National Environmental Policy Act (NEPA), the recent activities exceed the scope of participation intended by Congress.

The Property Clause of the U.S. Constitution gives Congress the power to determine what are "needful rules and regulations respecting" the public lands of the United States. (U.S. Constitution, article IV, section 3, clause 2). When Congress enacts legislation for lands under the Property Clause, this legislation necessarily overrides conflicting local laws under the Supremacy Clause. (U.S. Constitution, article VI, clause 2). As the Court stated in Kleppe v. New Mexico (426 U.S. 529 (1976)), "a different rule would place the public domain of the United States completely at the mercy of state legislation." The National forests are managed under federal law and any attempt to interfere with the specific statutory authority of the Forest Service would be an unconstitutional "obstacle to the accomplishment and execution of the full purposes and objectives of Congress." (Ventura County v. Gulf Oil Corporation, 601 F.2d 1080, 1086 (9th Cir. 1979), quoting Hines v. Davidowitz, 312 U.S. 52 (1941), affirmed without opinion, 445 U.S. 947 (1980)).



As discussed above, Congress has granted the Department of Agriculture the authority to regulate grazing on the national forests. Moreover, the regulation of grazing has been upheld as being constitutional in numerous cases. As the court in Dastervignes v. United States (122 F. 30 (9th Cir. 1903)), stated:

The rules and regulations prescribed by the Secretary of the Interior do not unjustly or illegally discriminate against the owners of sheep .... They simply carry out the object and purpose of the law in regard to the forest reservations.

Thus, the assertion that grazing permittees, "constitutional rights" are being violated by the actions of the Department of Agriculture in administering grazing on the national forests is without foundation in law.

### III. Grazing Permits under NEPA & NFMA

The purpose of this discussion is to review the relationship between the individual grazing permit and the broader Land and Resource Management Plan (LRMP). To fully appreciate the nature of the LRMP it is necessary to review Forest Service decisionmaking. The Forest Service, as most other Federal agencies, is subject to several levels of planning and decisionmaking. This section focuses on the LRMP level and the project level.

There are higher levels of decisionmaking which affect the LRMP and project level such as the President's Statement of Policy (16 USC 1606(a)), the 5-year Resources Planning Program (RPA Program), the Regional Guide (36 CFR 219.4 and 219.9) and most directly, the annual budget appropriation process. These higher levels of planning and decisionmaking do not have a precise relationship to LRMP plans and project decisions. The Statement of Policy, the RPA Program and the annual budget and appropriation process, are part of the ongoing relationship of the executive and legislative branches of the United States government.

#### A. LRMP Decisionmaking

An approved LRMP is the product of a comprehensive notice and comment process established by Congress in NFMA. (16 USC 1604(d) and 1604(j)). The approval of an LRMP establishes direction and process so that all future decisions in the planning area will include an "interdisciplinary approach to achieve integrated consideration of physical, biological, economic and other sciences." (16 USC 1604(b), 1604(f), 1604(g), and 1604(i)). The LRMP provides direction to assure coordination of multiple-uses (outdoor recreation, range, timber, watershed, wildlife and fish, and wilderness) and sustained yield. The Chief has held in administrative appeals that LRMP approval results in:

1. Establishment of forest multiple-use goals and objectives, 36 CFR 219.11(b);
2. Establishment of forest-wide management requirements (standards and guidelines) to fulfill the requirements of 16 USC 1604 applying to future activities (resource integration requirements 36 CFR 219.13 to 219.27);



3. Establishment of management areas and management area direction (management area prescriptions) applying to future activities in that management area (resource integration and minimum specific management requirements) 36 CFR 219.11(c);
4. Designation of suitable timber land (16 USC 1604(k) and 36 CFR 219.14) and establishment of allowable timber sale quantity (16 USC 1611 and 36 CFR 219.16);
5. Nonwilderness allocations or wilderness recommendations where 36 CFR 219.17 applies;
6. Establishment of monitoring and evaluation requirements 36 CFR 219.11(d); and
7. Project and activity level decisions as specifically identified in Record of Decision, LRMP, and adequately disclosed for NEPA purposes in LRMP EIS. (CFEQ v. Lyng, 731 F.Supp. 970, 97778 (D. Colo. 1989)).

During LRMP administration and implementation, forest land use remains subject to compliance with NEPA, which adds notice, public involvement, and analytical record-keeping requirements. LRMP administration and implementation (project and activity level decisionmaking) also remains subject to all the laws and regulations which apply to National Forest management. A preliminary question in project decisionmaking is "What does the Plan say?" The answer to this question requires review of the Plan and ROD in light of the activity, project or issue under review. There may be project decisions that require a change in the LRMP (amendment). There may be requests to change (amend) the Plan. There are also "consistency" determinations and other NFMA findings. As with promulgation, LRMP administration and implementation require public notice and involvement.

#### B. LRMP as Gateway for Protect Level Decisionmaking

In enacting NFMA and the LRMP requirement, Congress did not repeal the many laws and regulations which apply to land and resource use decisions of National Forest lands. The LRMP must be harmonized with the many legal authorities which also control or affect land and resource use decisions. The LRMP acts as a gateway to fulfillment of many of these laws such as NEPA and the Endangered Species Act (ESA). Because the LRMP is a guiding "ordinance" rather than a group of project decisions, the Forest Service has developed a decision process (LRMP and project levels) so that the many other legal requirements are fulfilled prior to "critical" project(s) decisions.

LRMPs establish multiple use goals and objectives. Forest Plans put in place management area prescriptions, standards, and guidelines for future decisionmaking. However, except as specifically stated in the LRMP ROD no project, contract, lease or other right to use National Forest System land results from LRMP approval. There is another level of decisionmaking. For NEPA, ESA, and other environmental law purposes the LRMP approval "proposed action" is direction to control future decisionmaking rather than irretrievable commitments to timber sales, road building, mineral activities and other uses.



While Congress did not precisely require staged decisionmaking (plan and project level) in NFMA, it did order the Secretary to promulgate regulations and procedures regarding Forest Service activities and fulfillment of NEPA (16 USC 1604(g) (1)), that certain projects have interdisciplinary review (16 USC 1604 (g) (3) (F) (ii)), and that all activities and projects are consistent with approved LRMPs (16 USC 1604(i)).

The purpose of Forest Service plan and project level decisionmaking is to insure that NEPA and other environmental laws are fulfilled prior to the critical decision point at which resources are committed. The Department of the Interior has taken a similar approach to the Bureau of Land Management Resource Management Plans for public lands. The Secretary of the Interior has provided that BLM Resource Management Plans are not "[f]inal implementation decisions on actions which require further specific plans, process steps, or decisions under specific provisions of law and regulations." (43 CFR 1601.0-5(k); Harold E. Carrasco, 90 IBLA 39 (December 10, 1985); Wilderness Society et. al., 90 IBLA 221 (January 30, 1986); and Wilderness Society, 109 IBLA 175 (June 9, 1989)).

The staged decisionmaking (LRMP and project) developed by the Forest Service to harmonize NFMA and decisionmaking with NEPA and other environmental laws is similar to other judicially approved staged decisionmaking. (Conner v. Burford 484 F.2d 1441, 1451 (9th Cir. 1988) cert. denied sub. nom. Sun Exploration & Production Co. v. United States, - U.S. -, 109 5 Ct. 1121, 103 L. Ed. 2d 184 (1989) and Northern Plains Resources Council v. Lujan, 874 F.2d 661,666 (9th Cir. 1989)).

The Forest Service staged decisionmaking is also similar to that used by the Department of the Interior under the Outer Continental Shelf Land Act, 43 U.S.C. 1351. In upholding actions under OCSLA of the Secretary of the Interior in the face of challenges to compliance with NEPA and the ESA, the Ninth Circuit quoted North Slope Borough v. Andrus, 642 F.2d 586, 609 (D.C. Cir. 1980):

Mandatory stage-by-stage review prevents the telescoping of any and every projected hazard to endangered life and to the environment into one overwhelming statutory obstacle. The OCSLA standards are not less strict, they simply rely more on achieving compliance than on exacting proscription. By ensuring graduated compliance with environmental and endangered life standards, OCSLA makes ESA requirements more likely to be satisfied both in an ultimate and a proximate sense. Tribal Village of Akutan v. Hodel, 869 F.2d 1185, 1193 (9th Cir. 1988).

### C. Role of an Allotment Management plan

#### i. FLPMA & PRIA

The Federal Land Policy Management Act, as amended by the Public Rangelands Improvement Act allows for Allotment Management Plans (AMPs) to be included in grazing permits at the discretion of the Secretary of Agriculture. (43 U.S.C. ( 1752(d), as amended by 92 Stat. 1803 (1978)). The Secretary has elected to exercise this discretion, and has delegated his authority to issue regulations in this area to the Chief of the Forest Service. (36 C.F.R. ( 222.1 et. seq.)).



An Allotment Management Plan is defined in FLPMA as a document prepared in consultation with lessees or permittees applying to livestock operations on the public lands prescribing (1) the manner in and extent to which livestock operations will be conducted in order to meet multiple use, sustained-yield, economic and other needs and objectives, (2) describing range improvements to be installed and maintained, and (3) containing such other provisions relating to livestock grazing and other objectives found by the Secretary to be consistent with the provisions of the FLPMA. (43 U.S.C. { 1702(k), and 36 C.F.R. { 222.1 (b) (2).)

Section 402d of FLPMA (43 U.S.C. { 1752(d)), requires the Secretary concerned, to develop AMPs "in careful and considered consultation, cooperation and coordination" with interested parties. FLPMA identifies "lessees, permittees, and landowners involved, ... and any State or States having lands within the area to be covered by such allotment plan" as interested parties. Additionally, under 36 C.F.R. { 222.7(d), the Chief has identified other "agencies, institutions, organizations, and individuals who have interest in improvement of range management" as interested parties with whom the Forest Service will cooperate. Furthermore, in FLPMA's declaration of policy, Congress specifically requires the Secretary of Agriculture to consider the views of the general public, and to allow for adequate third-party participation when exercising his discretionary authority. (43 U.S.C. { 1701(a) (5)).

While FLPMA is clear in its requirement that consultation is necessary during development of the AMP, it remains the sole responsibility of the Forest Service to determine how much grazing will be allowed on the national forests. As the court stated in Natural Resources Defense Council v. Hodel (618 F.Supp. 848,869 (D.C.Cal. 1985)), "the dominant message and command of [the Secretary's] Congressional mandate is that [the Secretary] shall prescribe the extent to which livestock grazing shall be conducted on the public lands." Thus, while some degree of consultation with interested parties is required by FLPMA, the final decision with respect to grazing allotments is the Forest Service's alone to make.

## ii. NFMA & NEPA

The individual Forest Plan provides broad direction for site-specific resource planning. Allotment management planning attempts to implement this direction through site-specific analysis of the range resource. The development of an Allotment Management Plan or review of an existing AMP for compliance with Forest Plan Standards and Guidelines could result in changing management on an allotment; e.g., a change in the grazing system, additional range improvements, an adjustment in the grazing season, level of use and/or numbers of livestock to meet Forest Plan direction. Changes in management on an allotment are made through the allotment management planning process, a process including environmental analysis in accordance with NEPA. (Forest Service Manual 2210, Range Management Planning.)

Allotment management planning will include review of the Forest Plan direction, collection and evaluation of range information, alternative development, environmental and economic analysis, and development of a management plan. The



decision to implement a specific AMP is an appealable decision under either 36 CFR 251 or 36 CFR 217. The public will be involved in this ongoing management through involvement in project decisions, grazing allotment planning, Forest Plan amendments, and/or revisions. There will be opportunities for the public and interest groups to be heard.

#### D. Forest Plans and Grazing permit Issuance and Renewal

As existing term grazing permits are reissued, or new term grazing permits issued, they must be consistent with the individual Forest Plan direction. The approach to be used in implementing this direction was described by the Chief of the Forest Service in recent letters to Regional Foresters. His Letter of April 17, 1990, states, in part:

Consistency is determined by comparing the grazing permit including the allotment management plan (AMP), with the Forest Plan direction stated in terms of Forest-wide and management area standards and guidelines. The AMP and grazing permit(s) must be consistent with the Forest Plan, or the Forest Plan must be amended. Any Forest Plan amendment must include appropriate public involvement as well as appropriate NEPA analysis and documentation.

\* \* \*

Forest Supervisors and authorized District Rangers shall bring grazing permits into compliance as soon as practical. In any case, when they reissue permits, because of expiration or waiver, or issue new permits, the permits will comply with the forest plan. (See attachment).

Further details of this process are set forth in the Chief's July 27, 1990, Letter. It states that where there is no AMP or the AMP conflicts with the Standards and Guidelines, and an application is received associated with a waiver or expiration of a permit, a permit shall be issued if the Forest Plan does not prohibit grazing in the designated area. Part 3 of the permit shall include as special terms and conditions: (1) the standards and guidelines applicable to livestock grazing, with special attention to water quality, threatened and endangered species, riparian areas, and management indicator species; and (2) a clause which states the date a new AMP is expected to be completed and that, upon completion of the new AMP, the term permit will be issued for a 10-year period with the new AMP as part of the Permit.

#### E. LRMP Summary

The nature of an LRMP is comparable to a zoning ordinance. Forest Planning is an on-going system of management in which the Forest Service provides an opportunity for involvement in plan level and project level decisionmaking. Senator Humphrey spoke of NFMA integrated decisionmaking in 1976:

The days have ended when the forest may be viewed only as trees and trees only as timber. The soil and water, the grasses and the shrubs, the fish and wildlife, and the beauty that is the forest must become integral parts of the resource manager's thinking and actions.



NFMA ended single resource plans, and plans that didn't have full public involvement and review. NFMA gave the Forest Service a charter to make project and land use decisions under the framework of the Land and Resource Management Plans and all laws and regulations applicable to the decision at hand.

#### IV. Conclusion

The United States Constitution placed control of federal lands with Congress, enabling Congress to manage the federal lands consistent with contemporary demands. As the history of federal land management demonstrates, changing societal pressures often force changes in federal land usage. Over time, Congress has been clear in its direction to the land management agencies that the federal lands are to be managed with the needs of the general public in mind, and not those of particular individuals. To ensure this end, Congress has allowed for extensive public involvement in governmental decisionmaking, giving all interested parties the opportunity to participate in the management of the federal lands.



## APPENDIX G

### Allan Savory and Holistic Resource Management

Grazing activists may encounter permittees or Forest Service personnel who are advocates of Allan Savory's Holistic Resource Management principles. The purpose of this Appendix is to give a VERY BRIEF introduction to Allan Savory and HRM. Allan Savory's ideas about HRM have been recorded in two books--a "textbook" and a "workbook." These books are cited below. In addition, there have been a number of discussions of HRM in other publications. A full discussion of Allan Savory and HRM is beyond the scope of this Handbook. If you'd like more information, you could contact the authors or PLAN.

To make a long story short, Allan Savory proposes that in "brittle" environments, the condition and productivity of rangelands can be improved by increasing "animal impact" and "herd effect." Brittle environments are typified by unreliable precipitation, a high rate of chemical and physical (as opposed to biological) decay of old plant parts and a slow rate of successional development. In these "brittle" environments, Savory contends that rest from livestock grazing will not improve range condition, but may lead instead to the accumulation of old plant material that may hamper new growth or kill the plant.

In "brittle" environments, Savory contends that ecological condition can be improved by applying high "animal impact." Animal impact includes the trampling, defecating and urinating that herding animals have on the land. Savory contends that animal impact can be beneficial in brittle environments because it breaks the soil surface and provides a natural environment for new plants to establish themselves. In general, animal impact is most desirable when a large herd of animals is present in an area in an excited state for a relatively short period of time. This "herd effect," claims Savory, can result from the presence of predators or certain management actions. *In summary Savory claims that cattle (or other livestock) can be used under the right conditions as a "tool" to improve the condition and productivity of rangelands.*

Originally, Savory advocated a system in which a grazing area, (called a cell by Savory) was subdivided into a number of paddocks and a herd of livestock moved through the paddocks relatively quickly. Now, it appears that Savory is advocating increased herding instead of extensive fencing in order to achieve beneficial animal impact.

Under Savory's system, decisions about when to graze in a paddock (or pasture) depend in large part on calculated and observed periods for plants to recover from earlier grazing. In addition, extensive monitoring of conditions related to the water, mineral and energy cycles is strongly encouraged. All of these concepts and practices are explained more thoroughly in the books cited below.



A number of Savory's claims have brought consternation to a variety of individuals, although to the authors' knowledge, these concerns have not all been discussed in one reference source. In general, concerns about Savory's claims center around the following:

- The tendency for proponents of Savory's system to claim that increased numbers of livestock are needed to achieve beneficial "animal impact."

- The tendency to build more miles of fence on public land in order to institute a grazing system based on Savory's model.

- The lack of large native herbivores in large parts of the arid ("brittle") southwest. That is, these ecosystems apparently evolved without the impact of "herd effect."

- A disagreement about the role of cryptogamic crusts made of algae, mosses and lichens. Savory contends that crusting can inhibit ecological succession. Others note that these crusts are typically the first step in ecological succession and help hold moisture, prevent erosion and increase nitrogen fixation.

- The damage that can be done to riparian areas that are included in a Savory-type grazing systems. Riparian areas are, by definition, not brittle and even Savory notes they are benefitted by rest, and not by animal impact.

- The economics of trying to apply a Savory-type system in areas that may be marginal for livestock production. Building fences (or even intensive herding) and developing water sources in order to "apply animal impact" can be extremely expensive (and time-consuming), yet many of these "brittle" areas are often marginally productive for livestock production. Thus, a permittee (and the Forest Service) may become committed to large investments that cannot be sustained long enough to see the hoped for benefits. Indeed, sometimes there are few, if any, funds available to undertake the fencing and water projects so the plan for improved management may never be realized on the ground.

For a full exposition of Savory's ideas, see the following two books.

1. Savory, Allan, Holistic Resource Management, Island Press, Covelo, California (1988)

2. Bingham, Sam with Allan Savory, Holistic Resource Management Workbook, Island Press, Covelo, California (1990)

For further information on concerns about Savory's propositions, contact the authors or the Public Lands Action Network.



## APPENDIX H

### The Three B's for Activists: Bureaucracy, Backlash, and Burnout

By Leslie Glustrom

Once you start getting involved in an issue--in short, taking responsibility for something more than your day-to-day existence--you'll probably be confronted with a number of frustrations you may not have experienced previously. I summarize these as "The Three B's"--Bureaucracy, Backlash and Burnout." You'll probably want to watch out for the pitfalls associated with each of these and take precautions accordingly.

#### BUREAUCRACY

Ahhhhh, the "Bureaucracy...." You know about bureaucracies-- and I'm sure someone has written a book that describes what you're likely to experience as you try to work with a bureaucracy. You know, all the bureaucracy's strategies for frustrating the best of your efforts. I remind myself that typically a bureaucracy's first priority is to maintain stability and let's face it your efforts to reform it are a threat to its stability!

When you realize that stability is a prized bureaucratic commodity, you start to understand that all those bureaucratic strategies that frustrate you to no end are really just the bureaucracy trying to maintain its own stability. You know--they "forget" that you requested this information or that. Or they forget that you were interested in this decision or that. Or they seem to ignore you--no matter how many times you make your point whether in person or in writing. Or they seem intent upon wearing you down. Or they seem to want to make you feel like you don't know what you're talking about. Or they try to intimidate you either overtly or covertly. Or, they may even try to coopt you--to get you to adopt their point of view and become an unpaid spokesperson for the agency. Or they might ridicule you or your efforts. These aren't really a reflection on the validity of your arguments; they're just natural responses when stability takes precedence over everything else.

(I wouldn't be fair if I didn't note that there are a substantial number of people within the bureaucracy who ARE NOT totally dedicated to stability. Indeed, I believe there are a growing number of Forest Service personnel who are sincerely interested in enlightened public land management. It can be helpful to remember that these brave souls need our support because they too are fighting that deadening tendency of the bureaucracy to seek stability above all else!)

Whatever, if you're serious about achieving your ends when working with a bureaucracy, BE PERSISTENT!! Sooner or later, they have to start taking you



seriously. Don't be surprised, however, if this takes several months or even years of intense work. Change, whether it is individual or societal, never comes easily. If you're serious about bringing change about you've got to be in it for the long haul!!

## BACKLASH

The problem of backlash will affect some activists more seriously than others. If you live in a big city where there is substantial support for your views and those with differing opinions don't have a lot of political power, you may not have to worry too much about backlash. On the other hand, if you live in a rural area without a lot of support, backlash may be a serious issue. You may find yourself attacked in public (for example in the local newspaper or in public meetings) or otherwise ridiculed.

I don't think there is any universal solution to the problem of backlash. You may want to gauge your strategy depending on the probability of backlash occurring--e.g. try to work more behind the scenes rather than taking the issue on in a really public way. Or you may decide to "guts it out" and just be prepared for the reaction and not take it too seriously. You might try to understand why the opposition is so defensive and then try to allay some of their more irrational concerns.

Whatever, perhaps the best response if the backlash is severe is to KEEP YOUR PERSPECTIVE. Remember that change is painful and slow and those advocating change have often been ridiculed because they were out in front of popular opinion--at least until popular opinion catches up with them!

## BURNOUT

Of the "Three B's," **The most dangerous is burnout!! If you burn out and give up, then you'll be doing nothing to promote change, so burnout prevention has to be your number one priority!!**

Once you start taking responsibility for something more than your day-to-day existence, I think you'll be astounded at how quickly you'll become inundated with "stuff to do." Everything is connected to everything else so you'll find yourself attracted and invited to become involved with an ever growing number of issues. Needless to say this can wreak havoc with your life!! The remedy I suggest is to **"Protect your personal space!! Remember, if you burn out, your effectiveness drops to zero!"** That means it's often better to let a few things slip by and protect yourself from burnout than to try to do everything and end up burning out! Burnout prevention may mean taking a few hours off to read a trashy novel or to zone out in front of the TV. Or it might mean taking a few days off to (heaven forbid) actually get out in the woods--without thinking about the problem at hand! Or it might mean taking a few weeks or months off to devote time to your family or your "real" job or your housekeeping or getting in shape physically or working on a completely different problem, or whatever.



Whatever your needs and desires--take care of them so you'll have the strength to stick with the fight for the long haul!

Don't worry, the problems won't go anywhere while you're regathering your strength! It's like a soap opera--you can miss several months of episodes, but it won't take long for you to figure out what's going on when you tune back in! Also, if it is really important, you have to trust that one way or the other it'll be taken care of. **Your first priority should always be burnout prevention** and if you do a good job of it, you'll find that it is also the best way to maximize your effectiveness! Take the time you need and trust that the world will turn without you!

**As an antidote for the bureaucracy, try persistence; for backlash, try perspective; and for burnout, protect your personal space!**

**Good Luck!**



## APPENDIX I



# A Sample Freedom of Information Act Request

Natural Resources  
Defense Council

90 New Montgomery  
San Francisco, CA 94105  
415 777-0220

May 6, 1987

Delmar Vail, State Director  
Bureau of Land Management  
U.S. Department of the Interior  
Idaho State Office  
3380 Americana Terrace  
Boise, Idaho 83706

Re: Freedom of Information Act Request

Dear Mr. Vail:

As you know, the Natural Resources Defense Council, Inc. (NRDC) has a longstanding interest in the Bureau of Land Management's administration of livestock grazing on the public lands and, in particular, in the Bureau's efforts to ensure that livestock use does not exceed grazing capacity. We have been informed by the BLM's Washington office that grazing decisions based on monitoring data are due to be made, pursuant to agency policy, in two Idaho areas this year -- the Twin Falls and Salmon environmental impact statement areas. In order that we may fully participate in the decision-making process as well as evaluate the decisions that are made this year and determine the degree to which the requirements of current policy are being satisfied in Idaho, we hereby request, pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552 (1982), and Departmental regulations, 43 C.F.R. Part 2, Subpart B, that you supply us with copies of the following documents, which we have described as specifically as possible:

*These are  
BLM  
Regulations*

(a) all instruction memoranda, information memoranda and other written correspondence issued by you or other Idaho BLM officials to district and/or resource areas regarding the Bureau's policy on monitoring, including, but not limited to, all documents which discuss the kinds of monitoring studies needed, the manner in which they should be conducted, the quantity and/or quality of data necessary to support grazing decisions, the kinds of decisions that can be made at the end of a five year monitoring period, and the procedures that are to be followed in making decisions based on monitoring data;



(b) all documents prepared by Idaho BLM employees which assess or describe the adequacy of current monitoring efforts and currently available monitoring data for decisionmaking purposes in the Twin Falls and Salmon areas;

(c) the current schedules and proposed procedures for making the necessary decisions that are being followed in the above two areas; and

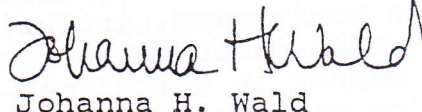
(d) all documents prepared by any Idaho BLM employee(s) since March 5, 1982 which describe the status of rangeland monitoring efforts being carried out on the public lands in Idaho, including lands in the Twin Falls and Salmon areas, by type and frequency of study, and, if possible, by allotment.

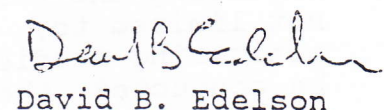
If some or all of this request is denied, please specify the exemption claimed as the basis for such denial.

The requested documents will not be used for private gain or advantage, but rather to benefit members of NRDC and others who are interested in participating in the BLM's decision-making process and who wish to ensure that authorized livestock use of the public's lands does not exceed the grazing capacity. Accordingly, we ask, on behalf of NRDC, a non-profit public interest organization, that you waive all fees and charges connected with this request, pursuant to 43 C.F.R. § 2.19(c). The Bureau has, in fact, always waived fees and charges in the past for requests made by us regarding its range management programs. In the event that fees and charges will not be waived, please do not incur any expenditures on our behalf without first notifying us.

Thank you very much for your attention to this request. If you have any questions about the documents we have requested, or if we can provide more information concerning our request for a fee waiver, please feel free to telephone us. We are looking forward to hearing from you within ten days, as required by FOIA.

Sincerely,

  
Johanna H. Wald

  
David B. Edelson

JHW/DBE:hw



# APPENDIX J

## Forest Service Range Regulations

(Subpart A only)

36 CFR Ch. II (7-1-90 Edition)

### PART 222—RANGE MANAGEMENT

#### Subpart A—Grazing and Livestock Use on the National Forest System

- Sec.
- 222.1 Authority and definitions.
- 222.2 Management of the range environment.
- 222.3 Issuance of grazing and livestock use permits.
- 222.4 Changes in grazing permits.
- 222.6 Compensation for permittees' interest in authorized permanent improvements.
- 222.7 Cooperation in management.
- 222.8 Cooperation in control of stray or unbranded livestock, animal diseases, noxious farm weeds, and use of pesticides.
- 222.9 Range improvements.
- 222.10 Range betterment fund.
- 222.11 Grazing advisory boards.

#### Subpart B—Management of Wild Free-Roaming Horses and Burros

- 222.20 Authority and definitions.
- 222.21 Administration of wild free-roaming horses and burros and their environment.
- 222.22 Ownership claims.
- 222.23 Removal of other horses and burros.
- 222.24 Use of helicopters, fixed-wing aircraft and motor vehicles.
- 222.25 Protection of wild free-roaming horses and burros when they are upon other than the National Forest System or public lands.
- 222.26 Removal of wild free-roaming horses and burros from private lands.
- 222.27 Maintenance of wild free-roaming horses and burros on privately-owned lands.
- 222.28 Agreements.
- 222.29 Relocation and disposal of animals.
- 222.30 Disposal of carcasses.
- 222.31 Loss of status.
- 222.32 Use of non-Forest Service personnel.
- 222.33 Management coordination.
- 222.34 National Advisory Board.
- 222.35 Studies.
- 222.36 Arrest.

#### Subpart C—Grazing Fees

- 222.50 General procedures.
- 222.51 National Forests in 16 Western States.
- 222.52 National Grasslands.
- 222.53 Grazing fees in the East—noncompetitive procedures.
- 222.54 Grazing fees in the East—competitive bidding.

### Forest Service, USDA

**AUTHORITY:** 7 U.S.C. 1010-1012; 16 U.S.C. 551; 16 U.S.C. 572; 31 U.S.C. 9701; 43 U.S.C. 1901; E.O. 12548, 51 FR 1986 Comp., p. 188.

#### Subpart A—Grazing and Livestock Use on the National Forest System

**AUTHORITY:** 92 Stat. 1803, as amended (43 U.S.C. 1901), 85 Stat. 649, as amended (16 U.S.C. 1331-1340); sec. 1, 30 Stat. 35, as amended (18 U.S.C. 551); sec. 32, 50 Stat. 522, as amended (7 U.S.C. 1011).

**SOURCE:** 42 FR 56732, Oct. 28, 1977, unless otherwise noted.

#### § 222.1 Authority and definitions.

(a) **Authority.** The Chief, Forest Service, shall develop, administer and protect the range resources and permit and regulate the grazing use of all kinds and classes of livestock on all National Forest System lands and on other lands under Forest Service control. He may redelegate this authority.

(b) **Definitions.** (1) An *allotment* is a designated area of land available for livestock grazing.

(2) An *allotment management plan* is a document that specifies the program of action designated to reach a given set of objectives. It is prepared in consultation with the permittee(s) involved and:

(i) Prescribes the manner in and extent to which livestock operations will be conducted in order to meet the multiple-use, sustained yield, economic, and other needs and objectives as determined for the lands, involved; and

(ii) Describes the type, location, ownership, and general specifications for the range improvements in place or to be installed and maintained on the lands to meet the livestock grazing and other objectives of land management; and

(iii) Contains such other provisions relating to livestock grazing and other objectives as may be prescribed by the Chief, Forest Service, consistent with applicable law.

(3) **Base property** is land and improvements owned and used by the permittee for a farm or ranch operation and specifically designated by him to qualify for a term grazing permit.

### § 222.1

(4) **Cancel** means action taken to permanently invalidate a term grazing permit in whole or in part.

(5) A **grazing permit** is any document authorizing livestock to use National Forest System or other lands under Forest Service control for the purpose of livestock production including:

(i) **Temporary grazing permits** for grazing livestock temporarily and without priority for reissuance.

(ii) **Term permits** for up to 10 years with priority for renewal at the end of the term.

(6) **Land subject to commercial livestock grazing** means National Forest System lands within established allotments.

(7) **Lands within National Forest in the 16 contiguous western States** means lands designated as National Forest within the boundaries of Arizona, California, Colorado, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Utah, Washington, and Wyoming (National Grasslands are excluded).

(8) **Livestock** means animals of any kind kept or raised for use or pleasure.

(9) **Livestock use permit** means a permit issued for not to exceed one year where the primary use is for other than grazing livestock.

(10) **Modify** means to revise the terms and conditions of an issued permit.

(11) **National Forest System lands**, are the National Forests, National Grasslands, Land Utilization Projects, and other Federal lands for which the Forest Service has administrative jurisdiction.

(12) **On-and-off grazing permits** are permits with specific provisions on range only part of which is National Forest System lands or other lands under Forest Service control.

(13) **On-the-ground expenditure** means payment of direct project costs of implementing an improvement or development, such as survey and design, equipment, labor and material (or contract) costs, and on-the-ground supervision.

(14) **Other lands under Forest Service control** are non-Federal public and private lands over which the Forest



Service has been given control through lease, agreement, waiver, or otherwise.

(15) *Private land grazing permits* are permits issued to persons who control grazing lands adjacent to National Forest System lands and who waive exclusive grazing use of these lands to the United States for the full period the permit is to be issued.

(16) *Permittee* means any person who has been issued a grazing permit.

(17) *Permitted livestock* is livestock authorized by a written permit.

(18) *Person* means any individual, partnership, corporation, association, organization, or other private entity, but does not include Government Agencies.

(19) *Range betterment* means rehabilitation, protection and improvement of National Forest System lands to arrest range deterioration and improve forage conditions, fish and wildlife habitat, watershed protection, and livestock production.

(20) *Range betterment fund* means the fund established by title IV, section 401(b)(1), of the Federal Land Policy and Management Act of 1976. This consists of 50 percent of all monies received by the United States as fees for grazing livestock on the National Forests in the 16 contiguous western States.

(21) *Range Improvement* means any activity or program designed to improve production of forage and includes facilities or treatments constructed or installed for the purpose of improving the range resource or the management of livestock and includes the following types:

(i) *Non-structural* which are practices and treatments undertaken to improve range not involving construction of improvements.

(ii) *Structural* which are improvements requiring construction or installation undertaken to improve the range or to facilitate management or to control distribution and movement of livestock.

(A) *Permanent* which are range improvements installed or constructed and become a part of the land such as: dams, ponds, pipelines, wells, fences, trails, seeding, etc.

(B) *Temporary* which are short-lived or portable improvements that can be removed such as: troughs, pumps and electric fences, including improvements at authorized places of habitation such as line camps.

(22) *Suspend* means temporary withholding of a term grazing permit privilege, in whole or in part.

(23) *Term period* means the period for which term permits are issued, the maximum of which is 10 years.

(24) *Transportation livestock* is livestock used as pack and saddle stock for travel on the National Forest System.

(Sec. 1, 30 Stat. 35, as amended (16 U.S.C. 551); sec. 1, 33 Stat. 628 (16 U.S.C. 472); sec. 32, 50 Stat. 525, as amended (7 U.S.C. 1011); sec. 19, 64 Stat. 88 (16 U.S.C. 5801); Title IV, Pub. L. 94, 90 Stat. 2771 (43 U.S.C. 1751, et seq.); 92 Stat. 1803 (43 U.S.C. 1901))

[42 FR 56732, Oct. 28, 1977, as amended at 44 FR 61345, Oct. 25, 1979]

§ 222.2 Management of the range environment.

(a) Allotments will be designated on the National Forest System and on other lands under Forest Service control where the land is available for grazing. Associated private and other public lands should, but only with the consent of the landowner, lessee, or agency, be considered in such designations to form logical range management units.

(b) Each allotment will be analyzed and with careful and considered consultation and cooperation with the affected permittees, landowners, and grazing advisory boards involved, as well as the State having land within the area covered, and an allotment management plan developed. The plan will then be approved and implemented. The analysis and plan will be updated as needed.

(c) Forage producing National Forest System lands will be managed for livestock grazing and the allotment management plans will be prepared consistent with land management plans.

(Sec. 1, 30 Stat. 35, as amended (16 U.S.C. 551); sec. 1, 33 Stat. 628 (16 U.S.C. 472); sec. 32, 50 Stat. 525, as amended (7 U.S.C. 1011); sec. 19, 64 Stat. 88 (16 U.S.C. 5801); Title IV, Pub. L. 94, 90 Stat. 2771 (43 U.S.C. 1751, et seq.); 92 Stat. 1803 (43 U.S.C. 1901))



[42 FR 56732, Oct. 28, 1977, as amended at 44 FR 61346, Oct. 25, 1979; 46 FR 42449, Aug. 21, 1981]

§ 222.3 Issuance of grazing and livestock use permits.

(a) Unless otherwise specified by the Chief, Forest Service, all grazing and livestock use on National Forest System lands and on other lands under Forest Service control must be authorized by a grazing or livestock use permit.

(b) Grazing permits and livestock use permits convey no right, title, or interest held by the United States in any lands or resources.

(c) The Chief, Forest Service, is authorized to issue permits for livestock grazing and other use by livestock of the National Forest System and on other lands under Forest Service control as follows:

(1) Grazing permits with priority for renewal may be issued as follows: On National Forests in the 16 contiguous western States 10-year term permits will be issued unless the land is pending disposal, or will be devoted to other uses prior to the end of ten years, or it will be in the best interest of sound land management to specify a shorter term. On National Forest System lands other than National Forests in the 16 contiguous western States, the permit term shall be for periods of 10 years or less. Term grazing permits for periods of 10 years or less in the form of grazing agreements may be issued to cooperative grazing associations or similar organizations incorporated or otherwise established pursuant to State law. Such an agreement will make National Forest System lands and improvements available to the association for grazing in accordance with provisions of the grazing agreement and Forest Service policies. Term permits authorized in this paragraph may be in the form of private land or on-and-off grazing permits where the person is qualified to hold such permits under provisions the Chief may require. Permits issued under this paragraph are subject to the following:

(i) Except as provided for by the Chief, Forest Service, paid term permits will be issued to persons who own

livestock to be grazed and such base property as may be required, provided the land is determined to be available for grazing purposes by the Chief, Forest Service, and the capacity exists to graze specified numbers of animals.

(ii) A term permit holder has first priority for receipt of a new permit at the end of the term period provided he has fully complied with the terms and conditions of the expiring permit.

(iii) In order to update terms and conditions, term permits may be cancelled at the end of the calendar year of the midyear of the decade (1985, 1995, etc.), provided they are reissued to the existing permit holder for a new term of 10 years.

(iv) New term permits may be issued to the purchaser of a permittee's permitted livestock and/or base property, provided the permittee waives his term permit to the United States and provided the purchaser is otherwise eligible and qualified.

(v) If the permittee chooses to dispose of all or part of his base property or permitted livestock (not under approved nonuse) but does not choose to waive his term permit, the Forest Supervisor will give written notice that he no longer is qualified to hold a permit, provided he is given up to one year to reestablish his qualifications before cancellation action is final.

(vi) The Chief, Forest Service, shall prescribe provisions and requirements under which term permits will be issued, renewed, and administered, including:

(A) The amount and character of base property and livestock the permit holder shall be required to own.

(B) Specifying the period of the year the base property shall be capable of supporting permitted livestock.

(C) Acquisition of base property and/or permitted livestock.

(D) Conditions for the approval of nonuse of permit for specified periods.

(E) Upper and special limits governing the total number of livestock for which a person is entitled to hold a permit.

(F) Conditions whereby waiver of grazing privileges may be confirmed and new applicants recognized.

(2) Permits with no priority for reissuance, subject to terms and condi-



tions as the Chief, Forest Service, may prescribe, are authorized as follows:

(i) Temporary grazing permits for periods not to exceed one year, and on a charge basis, may be issued:

(A) To allow for use of range while a term grazing permit is held in suspension.

(B) To use forage created by unusually favorable climatic conditions.

(C) To use the forage available when the permit of the normal user's livestock is in nonuse status for reasons of personal convenience.

(D) To allow a person to continue to graze livestock for the remainder of the grazing season where base property has been sold, the permit waived, and a new term permit issued.

(E) To allow grazing use in the event of drought or other emergency of National or Regional scope where such use would not result in permanent resource damage.

(ii) Livestock use permits for not to exceed one year may be issued under terms and conditions prescribed by the Chief, Forest Service, as follows:

(A) Paid permits for transportation livestock to persons engaged in commercial packing, dude ranching, or other commercial enterprises which involve transportation livestock including mining, ranching, and logging, activities.

(B) Paid or free permits for research purposes and administrative studies.

(C) Paid or free permits to trail livestock across National Forest System lands.

(D) Free permits to persons who reside on ranch or agricultural lands within or contiguous to National Forest System lands for not to exceed 10 head of livestock owned or kept and whose products are consumed or whose services are used directly by the family of the resident, and who distinctly need such National Forest System lands to support such animals.

(E) Free permits to campers and travelers for the livestock actually used during the period of occupancy. This may be authorized without written permit.

(F) Paid or free permits for horses, mules, or burros to persons who clearly need National Forest System land

to support the management of permitted livestock.

(G) Free permits for horses, mules, or burros to cooperators who clearly need National Forest System land to support research, administration or other work being conducted. This may be authorized without written permit.

(H) Paid permits to holders of grazing permits for breeding animals used to service livestock permitted to graze on lands administered by the Forest Service.

(I) Paid permits or cooperative agreements entered into as a management tool to manipulate revegetation on a given parcel of land.

[42 FR 56732, Oct. 28, 1977, as amended at 43 FR 27532, June 26, 1978; 44 FR 61345, Oct. 25, 1979; 46 FR 42449, Aug. 21, 1981]

#### § 222.4 Changes in grazing permits.

(a) The Chief, Forest Service, is authorized to cancel, modify, or suspend grazing and livestock use permits in whole or in part as follows:

(1) Cancel permits where lands grazed under the permit are to be devoted to another public purpose including disposal. In these cases, except in an emergency, no permit shall be cancelled without two years' prior notification.

(2) Cancel the permit in the event the permittee:

(i) Refuses to accept modification of the terms and conditions of an existing permit.

(ii) Refuses or fails to comply with eligibility or qualification requirements.

(iii) Waives his permit back to the United States.

(iv) Fails to restock the allotted range after full extent of approved personal convenience non-use has been exhausted.

(v) Fails to pay grazing fees within established time limits.

(3) Cancel or suspend the permit if the permittee fails to pay grazing fees within established time limit.

(4) Cancel or suspend the permit if the permittee does not comply with provisions and requirements in the grazing permit or the regulations of the Secretary of Agriculture on which the permit is based.



(5) Cancel or suspend the permit if the permittee knowingly and willfully makes a false statement or representation in the grazing application or amendments thereto.

(6) Cancel or suspend the permit if the permit holder is convicted for failing to comply with Federal laws or regulations or State laws relating to protection of air, water, soil and vegetation, fish and wildlife, and other environmental values when exercising the grazing use authorized by the permit.

(7) Modify the terms and conditions of a permit to conform to current situations brought about by changes in law, regulation, executive order, development or revision of an allotment management plan, or other management needs.

(8) Modify the seasons of use, numbers, kind, and class of livestock allowed or the allotment to be used under the permit, because of resource condition, or permittee request. One year's notice will be given of such modification, except in cases of emergency.

(b) Association permits or grazing agreements may be canceled for non-compliance with title VI of the Civil Rights Act of 1964 and Department of Agriculture regulation promulgated thereunder.

[42 FR 56732, Oct. 28, 1977, as amended at 46 FR 42449, Aug. 21, 1981]

§ 222.6 Compensation for permittees' interest in authorized permanent improvements.

(a) Whenever a term permit for grazing livestock on National Forest land in the 16 contiguous western States is canceled in whole or in part to devote the lands covered by the permit to another public purpose, including disposal, the permittee shall receive from the United States a reasonable compensation for the adjusted value of his interest in authorized permanent improvements placed or constructed by him on the lands covered by the canceled permit. The adjusted value is to be determined by the Chief, Forest Service. Compensation received shall not exceed the fair market value of the terminated portion of the permittee's interest therein.

(b) In the event a permittee waives his grazing permit in connection with sale of his base property or permitted livestock, he is not entitled to compensation.

(Sec. 1, 30 Stat. 35, as amended (16 U.S.C. 551); sec. 1, 33 Stat. 628 (16 U.S.C. 472); sec. 32, 50 Stat. 525, as amended (7 U.S.C. 1011); sec. 19, 64 Stat. 88 (16 U.S.C. 5801); Title IV, Pub. L. 94, 90 Stat. 2771 (43 U.S.C. 1751, et seq.); 92 Stat. 1803 (43 U.S.C. 1901))

[42 FR 56732, Oct. 28, 1977, as amended at 44 FR 61345, Oct. 25, 1979]

§ 222.7 Cooperation in management.

(a) *Cooperation with local livestock associations*—(1) *Authority.* The Chief, Forest Service, is authorized to recognize, cooperate with, and assist local livestock associations in the management of the livestock and range resources on a single range allotment, associated groups of allotments, or other association-controlled lands on which the members' livestock are permitted to graze.

(2) *Purposes.* These associations will provide the means for the members to:

(i) Manage their permitted livestock and the range resources.

(ii) Meet jointly with Forest officers to discuss and formulate programs for management of their livestock and the range resources.

(iii) Express their wishes through their designated officers or committees.

(iv) Share costs for handling of livestock, construction and maintenance of range improvements or other accepted programs deemed needed for proper management of the permitted livestock and range resources.

(v) Formulate association special rules needed to ensure proper resource management.

(3) *Requirements for recognition.* The requirements for receiving recognition by the Forest Supervisor are:

(i) The members of the association must constitute a majority of the grazing permittees on the range allotment or allotments involved.

(ii) The officers of the association must be elected by a majority of the association members or of a quorum as specified by the association's constitution and bylaws.



§ 222.8

(iii) The officers other than the Secretary and Treasurer must be grazing permittees on the range allotment or allotments involved.

(iv) The association's activities must be governed by a constitution and bylaws acceptable to the Forest Supervisor and approved by him.

(4) *Withdrawing recognition.* The Forest Supervisor may withdraw his recognition of the association whenever:

(i) The majority of the grazing permittees request that the association be dissolved.

(ii) The association becomes inactive, and does not meet in annual or special meetings during a consecutive 2-year period.

(b) *Cooperation with national, State, and county livestock organizations.* The policies and programs of national, State, and county livestock organizations give direction to, and reflect in, the practices of their members. Good working relationships with these groups is conducive to the betterment of range management on both public and private lands. The Chief, Forest Service, will endeavor to establish and maintain close working relationships with National livestock organizations who have an interest in the administration of National Forest System lands, and direct Forest officers to work cooperatively with State and county livestock organizations having similar interests.

(c) *Interagency cooperation.* The Chief, Forest Service, will cooperate with other Federal agencies which have interest in improving range management on public and private lands.

(d) *Cooperation with others.* The Chief, Forest Service, will cooperate with other agencies, institutions, organizations, and individuals who have interest in improvement of range management on public and private lands.

§ 222.8 Cooperation in control of stray or unbranded livestock, animal diseases, noxious farm weeds, and use of pesticides.

(a) Insofar as it involves National Forest System lands and other lands under Forest Service control or the livestock which graze thereupon, the

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Chief, Forest Service, will cooperate with:

(1) State, county, and Federal agencies in the application and enforcement of all laws and regulations relating to livestock diseases, sanitation and noxious farm weeds.

(2) The Animal and Plant Health Inspection Service and other Federal or State agencies and institutions in surveillance of pesticides spray programs and

(3) State cattle and sheep sanitary or brand boards in control of stray and unbranded livestock to the extent it does not conflict with the Wild Free-Roaming Horse and Burro Act of December 15, 1971.

(b) The Chief, Forest Service, will cooperate with county or other local weed control districts in analyzing noxious farm weed problems and developing control programs in areas of which the National Forests and National Grasslands are a part.

(85 Stat. 649 (16 U.S.C. 1331-1340))

§ 222.9 Range improvements.

(a) The Chief, Forest Service, is authorized to install and maintain structural and nonstructural range improvements needed to manage the range resource on National Forest System lands and other lands controlled by the Forest Service.

(b) Such improvements may be constructed or installed and maintained, or work performed by individuals, organizations or agencies other than the Forest Service subject to the following:

(1) All improvements must be authorized by cooperative agreement or memorandum of understanding, the provisions of which become a part of the grazing permit(s).

(2) Title to permanent structural range improvements shall rest in the United States.

(3) Title to temporary structural range improvements may be retained by the Cooperator where no part of the cost for the improvement is borne by the United States.

(4) Title to nonstructural range improvements shall vest in the United States.



(5) Range improvement work performed by a cooperator or permittee on National Forest System lands shall not confer the exclusive right to use the improvement or the land influenced.

(c) A user of the range resource on National Forest System lands and other lands under Forest Service control may be required by the Chief, Forest Service, to maintain improvements to specified standards.

(d) Grazing fees or the number of animal months charged shall not be adjusted to compensate permittees for range improvement work performed on National Forest System lands: Provided, That, in accordance with section 32(c), title III, Bankhead-Jones Farm Tenant Act, the cost to grazing users in complying with requirements of a grazing permit or agreement may be considered in determining the annual grazing fee on National Grasslands or land utilization projects if it has not been used in establishing the grazing base value.

#### § 222.10 Range betterment fund.

In addition to range development which is accomplished through funds from the rangeland management budget line item and the Granger-Thye Act, and deposited and nondeposited cooperative funds, range development may also be accomplished through use of the range betterment fund as follows:

(a) On National Forest land within the 16 contiguous western States, the Chief, Forest Service, shall implement range improvement programs where necessary to arrest range deterioration and improve forage conditions with resulting benefits to wildlife, watershed protection, and livestock production. One-half of the available funds will be expended on the National Forest where derived. The remaining one-half of the fund will be allocated for range rehabilitation, protection and improvements on National Forest lands within the Forest Service Regions where they were derived. During the planning process there will be consultation with grazing permittees who will be affected by the range rehabilitation, protection and improvements,

and other interested persons or organizations.

(b) Range betterment funds shall be utilized only for on-the-ground expenditure for range land betterment, including, but not limited to, seeding and reseeding, fence construction, water development, weed and other plant control, and fish and wildlife habitat enhancement within allotments.

(Sec. 1, 30 Stat. 35, as amended (16 U.S.C. 551); sec. 1, 33 Stat. 628 (16 U.S.C. 472); sec. 32, 50 Stat. 525, as amended (7 U.S.C. 1011); sec. 19, 64 Stat. 88 (16 U.S.C. 5801); Title IV, Pub. L. 94, 90 Stat. 2771 (43 U.S.C. 1751, et seq.); 92 Stat. 1803 (43 U.S.C. 1901))

[42 FR 56732, Oct. 28, 1977, as amended at 44 FR 61345, Oct. 25, 1979]

#### § 222.11 Grazing advisory boards.

(a) *Establishment.* Persons holding term permits to graze livestock on National Forest System lands with headquarters, office in the 16 contiguous western States having jurisdiction over more than 500,000 acres of land subject to commercial livestock grazing may petition the Forest Supervisor for establishment of a statutory grazing advisory board in accordance with provisions of the Federal Land Policy and Management Act of 1976.

(1) Upon being properly petitioned by a simple majority (more than 50 percent) of term grazing permittees under the jurisdiction of such headquarters office, the Secretary shall establish and maintain at least one grazing advisory board.

(2) The Chief, Forest Service, shall determine the number of such boards, the area to be covered, and the number of advisers on each board.

(3) *Processing Petitions.* Upon receiving a proper petition from the grazing permittees, the Forest Supervisor will request the Chief, Forest Service, through the Regional Forester, to initiate action to establish grazing advisory boards in accordance with regulations of the Secretary of Agriculture. Grazing advisory boards will comply with the provisions of the Federal Advisory Committee Act.

(b) *Membership.* Grazing advisory boards established under this authority shall consist of members who are National Forest System term permit-



tees under the jurisdiction of a National Forest headquarters office in the 16 contiguous western States, provided board members shall be elected by term grazing permittees in the area covered by the board.

(c) *Elections.* The Forest Supervisor of the headquarters office shall prescribe and oversee the manner in which permittees are nominated and board members are elected. Nominations will be made by petition with all term grazing permittees under the jurisdiction of such headquarters office being eligible for membership on the board. All members of the board will be elected by secret ballot with each term grazing permittee in the area covered by the board being qualified to vote. No person shall be denied the opportunity to serve as a grazing advisory board member because of race, color, sex, religion, or national origin. No board member shall concurrently serve on another USDA advisory committee. The Forest Supervisor shall determine and announce the results of the election of the members of the board and shall recognize the duly elected board as representing National Forest System term grazing permittees in the areas for which it is established. Board members will be elected to terms not to exceed 2 years.

(d) *Charter and bylaws.* (1) The Forest Supervisor will prepare a charter to be filed with the Department and the Congress as required by Section 9(c) of the Federal Advisory Committee Act.

(2) A duly recognized grazing advisory board may, with the concurrence of a majority of its members and the Forest Supervisor, adopt bylaws to govern its proceedings.

(e) *Function.* The function of grazing advisory boards will be to offer advice and make recommendations concerning the development of allotment management plans and the utilization of range betterment funds.

(f) *Meetings.* The Forest Supervisor shall call at least one meeting of each board annually, and call additional meetings as needed to meet the needs of the permittees and the Forest Service. Each meeting shall be conducted in accordance with an agenda ap-

proved by the Forest Supervisor in the presence of a Forest officer.

(g) *Termination.* (1) Grazing advisory boards established under the Federal Land Policy and Management Act of 1976 shall continue until December 31, 1985, unless terminated earlier.

(2) The Forest Supervisor may withdraw recognition of any board whenever:

(i) A majority of the term grazing permittees for the area which the board represents requests that the board be dissolved.

(ii) The board becomes inactive and does not meet at least once each calendar year.

(86 Stat. 770 (5 U.S.C. App. 1); sec. 10 Stat. 35, as amended (16 U.S.C. 551); sec. 33 Stat. 628 (16 U.S.C. 472); sec. 32, 50 Stat. 525, as amended (7 U.S.C. 1011); sec. 19, Stat. 88 (16 U.S.C. 5801); Title IV, Pub. L. 94, 90 Stat. 2771 (43 U.S.C. 1751, et seq.); Stat. 1803 (43 U.S.C. 1901))

[42 FR 56732, Oct. 28, 1977, as amended; 43 FR 27532, June 26, 1978; 44 FR 61349, Oct. 25, 1979]



# APPENDIX K

## Forest Service Range Planning Regulations and the Definition of Suitability

### 36 CFR

#### § 219.20 Grazing resource.

In forest planning, the suitability and potential capability of National Forest System lands for producing forage for grazing animals and for providing habitat for management indicator species shall be determined as provided in paragraphs (a) and (b) of this section. Lands so identified shall be managed in accordance with direction established in forest plans.

(a) Lands suitable for grazing and browsing shall be identified and their condition and trend shall be determined. The present and potential supply of forage for livestock, wild and free-roaming horses and burros, and the capability of these lands to produce suitable food and cover for selected wildlife species shall be estimated. The use of forage by grazing and browsing animals will be estimated. Lands in less than satisfactory condition shall be identified and appropriate action planned for their restoration.

(b) Alternative range management prescriptions shall consider grazing systems and the facilities necessary to implement them; land treatment and

vegetation manipulation practices; and evaluation of pest problems; possible conflict or beneficial interactions among livestock, wild free-roaming horses and burros and wild animal populations, and methods of regulating these; direction for rehabilitation of ranges in unsatisfactory condition; and comparative cost efficiency of the prescriptions.

### 36 CFR § 219.3

Suitability: The appropriateness of applying certain resource management practices to a particular area of land, as determined by an analysis of the economic and environmental consequences and the alternative uses foregone. A unit of land may be suitable for a variety of individual or combined management practices.



# APPENDIX L

## Forest Service Appeal Regulations

### (36 C.F.R. Part 217)

#### PART 217—REQUESTING REVIEW OF NATIONAL FOREST PLANS AND PROJECT DECISIONS

##### Sec.

- 217.1 Purpose and scope.
- 217.2 Definitions.
- 217.3 Decisions subject to appeal.
- 217.4 Decisions not subject to appeal.
- 217.5 Giving notice of decisions subject to appeal.
- 217.6 Participants.
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- 217.8 Appeal process sequence.
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- 217.13 Reviewing officer authority.
- 217.14 Intervention.
- 217.15 Appeal record.
- 217.16 Decision.
- 217.17 Discretionary review.
- 217.18 Policy in event of judicial proceedings.
- 217.19 Applicability and effective date.
- 217.20 Special procedures applicable to appeals of certain timber sales in Oregon and Washington.

**AUTHORITY:** 16 U.S.C. 551, 472.

**SOURCE:** 54 FR 3357, Jan. 23, 1989, unless otherwise noted.

##### § 217.1 Purpose and scope.

(a) This subpart provides a process by which a person or organization interested in the management of the National Forest System may obtain review of an intended action by a higher level official. These rules establish who may appeal planned actions, the kind of decisions that may be appealed, the responsibilities of the participants in an appeal, and the procedures that apply.

(b) The process established in this part constitutes the final administrative opportunity for the public to influence National Forest System decisionmaking prior to implementation of various decisions. The rules of this subpart complement, but do not replace, numerous opportunities to participate in and influence agency decisionmaking provided pursuant to the National Environmental Policy Act of 1969 (NEPA), and the associated implementing regulations and procedures in 40 CFR parts 1500 through 1508, 36 CFR parts 216 and 219, Forest Service Manual Chapters 1920 and 1950, and Forest Service Handbooks 1909.12 and 1909.15. The rules do not provide an adjudication, grievance-oriented process. Rather, they provide an expeditious, objective review of NEPA derived decisions by an official at the next administrative level.

##### § 217.2 Definitions.

For the purposes of this part—

*Appellant* is the term used to refer to a person or organization (or an authorized agent or representative acting on their behalf) filing a notice of appeal under this part.

*Deciding Officer* means the Forest Service line officer who has the delegated authority and responsibility to make the decision being questioned under these rules.

*Decision document* means a written document that a Deciding Officer signs to execute a decision subject to review under this part. Specifically a Record of Decision, a Decision Notice, or Decision Memo.

*Decision documentation* refers to the decision document and all relevant environmental and other analysis documentation on which the Deciding Officer based a decision that is at issue under the rules of this part. Decision documentation includes, but is not limited to, a project file for proposed actions categorically excluded from documentation in an environmental assessment or environmental impact statement, environmental assessments, findings of no significant impact, environmental impact statements, land and resource management plans, regional guides, documents incorporated



by reference in any of the preceding documents, and drafts of these documents released for public review and comment.

*Decision Memo* is a concise memorandum to the files signed by a Deciding Officer recording a decision to take or implement an action that has been categorically excluded from documentation in either an environmental assessment or environmental impact statement (40 CFR 1508.4).

*Decision Notice* means the written document signed by a Deciding Officer when the decision was preceded by preparation of an environmental assessment (40 CFR 1508.9).

*Decision review* or *review* is the term used to refer to the process provided in this part by which a higher level officer reviews a decision of a subordinate officer in response to a notice of appeal.

*Forest Service line officer.* The Chief of the Forest Service or a Forest Service official who serves in a direct line of command from the Chief and who has the delegated authority to make and execute decisions under this subpart. Specifically, for the purposes of this subpart, a Forest Service employee who holds one of the following offices and titles: District Ranger, Forest Supervisor, Deputy Forest Supervisor, Regional Forester, Deputy Regional Forester, Deputy Chief, Associate Deputy Chief, Associate Chief, or the Chief of the Forest Service.

*Intervenor* is an individual who, or organization that, is interested in or potentially affected by a decision under appeal pursuant to this part, who has made a timely request to intervene in that appeal.

*Legal notice.* A notice of a decision appealable under this part published in the FEDERAL REGISTER or in the legal notices section of a newspaper of general circulation as required by § 217.5 of this part.

*Notice of appeal* is the written document filed with a Reviewing Officer by one who objects to a decision covered by this part and who requests review by the next higher line officer.

*Participants* include appellants, intervenors, the Deciding Officer, and the Reviewing Officer.

*Record of Decision* is the document signed by a Deciding Officer recording a decision that was preceded by preparation of an environmental impact statement (40 CFR 1505.2).

*Reviewing Officer* is the line officer one administrative level higher than the Deciding Officer or, in the case of a discretionary review, one level higher than the line officer who issued a first-level appeal decision.

[54 FR 3357, Jan. 23, 1989; 54 FR 13807, Apr. 5, 1989, as amended at 55 FR 7895, Mar. 6, 1990]

#### § 217.3 Decisions subject to appeal.

(a) Except as provided in § 217.4 of this part, written decisions governing plans, projects, and activities to be carried out on the National Forest System that result from analysis, documentation, and other requirements of the National Environmental Policy Act and the National Forest Management Act, and the implementing regulations, policies, and procedures are subject to appeal under this part.

(1) Only decisions documented in a Decision Memo, Decision Notice, or a Record of Decision are subject to appeal under this part. Preliminary planning decisions or preliminary decisions as to National Environmental Policy Act or National Forest Management Act processes made prior to release of final plans, guides, and other environmental documents are not appealable until issuance of decision documents.

(2) Forestry research and State and private forestry programs and activity decisions are subject to appeal under this part, if a specific decision is documented pursuant to paragraph (a)(1) of this section, and would be carried out directly on National Forest System lands.

(b) Decisions subject to appeal under this part include, but are not limited to:

(1) Approval, amendment, and revision of a forest land and resource management plan prepared pursuant to 36 CFR part 219.

(2) Approval, and amendment of a regional guide for forest planning prepared pursuant to 36 CFR 219.8.



(3) Other projects and activities for which decision documents are prepared, such as timber sales, road and facility construction, range management and improvements, wildlife and fisheries habitat improvement measures, forest pest management activities, removal of certain minerals or mineral materials, conveyance of land or interests in land out of Federal ownership, and establishment or expansion of winter sports or other special recreation sites.

(c) Decisions on any of the matters listed in this section made by an authorized subordinate Forest Service staff officer acting within delegated authority are considered to be decisions of the Forest Service line officer to whom the subordinate employee reports.

[54 FR 3357, Jan. 23, 1989, as amended at 54 FR 34509, Aug. 21, 1989]

§ 217.4 Decisions not subject to appeal.

(a) The following decisions are not subject to appeal under this part:

(1) Decisions appealable to the Agriculture Board of Contract Appeals, U.S. Department of Agriculture, under 7 CFR part 24.

(2) Decisions involving Freedom of Information Act denials under 7 CFR part 1 or Privacy Act determinations under 7 CFR 1.118.

(3) Decisions for which the jurisdiction of another Government agency or the Comptroller General supercedes that of the Department of Agriculture.

(4) Recommendations of Forest Service line officers to higher ranking Forest Service or Departmental officers or to other entities having final authority to implement the recommendation in question.

(5) Decisions appealable under separate administrative proceedings, including, but not limited to, those under 36 CFR 223.117, Administration of Cooperative or Federal Sustained Yield Units; 7 CFR 21.104, Eligibility for Relocation Payment or Amount; and 4 CFR part 21, Bid Protests.

(6) Decisions pursuant to Office of Management and Budget Circular A-76, Performance of Commercial Activities.

(7) Decisions concerning contracts under the Federal Property and Administration Services Act of 1949, as amended.

(8) Decisions covered by the Contract Disputes Act.

(9) Decisions involving Agency personnel matters.

(10) Decisions where relief sought is reformation of a contract or award of monetary damages.

(11) Decisions related to rehabilitation of National Forest System lands and recovery of forest resources resulting from natural disasters or other natural phenomena such as wildfires, severe wind, earthquakes, and flooding when the Regional Forester or, in situations of national significance, the Chief of the Forest Service determines and gives notice in the FEDERAL REGISTER that good cause exists to exempt such decisions from review under this part.

(12) Decisions embodied in rulemaking promulgated in accordance with the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) or in policies and procedures issued in the Forest Service Manual and handbooks (36 CFR parts 200 and 216).

(13) Decisions imposing penalties for archaeological violations under 36 CFR part 296.15 or for violations of prohibitions and orders under 36 CFR part 261.

(14) Decisions solely affecting the business relationship between the Forest Service and applicants for or holders of written instruments regarding occupancy and use of National Forest System lands except as provided for at 36 CFR part 251.82.

(b) In addition to decisions excluded from appeal by paragraph (a) of this section, the Forest Service shall dismiss any notice of appeal on subsequent implementing actions that result from the initial decision subject to review under this part as defined at § 217.3(b)(3). For example, an initial decision to offer a timber sale is appealable under this part; subsequent actions to advertise or award that sale are not appealable under this part. A subsequent implementing decision that is documented in a new decision document would be subject to appeal under this part.



[54 FR 3357, Jan. 23, 1989, as amended at 54 FR 34509, Aug. 21, 1989]

§ 217.5 Giving notice of decisions subject to appeal.

(a) For decisions subject to appeal under this part, Deciding Officers shall promptly mail the appropriate decision document (§ 217.3(a)(1)) to those who, in writing, have requested it, and to those who are known to have participated in the decisionmaking process.

(b) The Deciding Officer shall also give notice of decisions appealable under this part as follows:

(1) For all initial decisions of the Chief, notice shall be published in the FEDERAL REGISTER.

(2) For all other decisions, legal notice of the decision shall be published in a newspaper of general circulation identified pursuant to the requirements of paragraph (d) of this section. Deciding Officers may, at their discretion, also publish notice of their decisions in additional newspapers. Where a Deciding Officer elects to publish such additional notices, they shall be published after an initial legal notice has been published in the principal newspaper identified in the biannual FEDERAL REGISTER notice provided for in paragraph (d) of this section. Any such additional newspaper notices shall indicate the date that the appeal period ends, which shall be calculated based on the date of publication of the initial notice in the principal newspaper identified in the biannual FEDERAL REGISTER notice.

(c) All notices published pursuant to this section shall include a concise description of the decision made by title or subject matter, the date of the decision, the name and title of the official making the decision, and information on how to obtain a copy of the decision, and shall specify that the appeal period begins the day following the notice's publication as provided for in § 217.8(b)(1).

(d) Initially within 30 days of March 6, 1990, and thereafter at least twice annually, in April and in October, each responsible Forest Service officer shall, through FEDERAL REGISTER notice, advise the public of the principal newspaper to be utilized for pub-

lishing legal notices required by this section. The FEDERAL REGISTER notice shall also list all additional newspapers which the Deciding Officer expects to use for purposes of providing additional notice pursuant to paragraph (b) of this section.

[54 FR 3357, Jan. 23, 1989, as amended at 55 FR 7895, Mar. 6, 1990]

§ 217.6 Participants.

(a) Other than Forest Service employees, any person or any non-Federal organization or entity may challenge a decision covered by this part and request a review by the Forest Service line officer at the next administrative level.

(b) An intervenor as defined in § 217.2 of the subpart.

§ 217.7 Levels of appeal.

(a) *Decisions made by the Chief.* If the Chief of the Forest Service is the Deciding Officer, the notice of appeal is filed with the Secretary of Agriculture. Review by the Secretary is wholly discretionary. Within 15 days of receipt of a notice of appeal, the Secretary shall determine whether or not to review the decision in question. If the Secretary has not decided to review the Chief's decision by the expiration of the 15-day period, the requester(s) shall be notified by the Secretary's office that the Chief's decision is the final administrative decision of the Department of Agriculture. When the Secretary elects to review an initial decision made by the Chief, the Secretary shall conduct the review in accordance with the first level appeal procedures outlined in this rule.

(b) *Decisions made by Forest Supervisors and Regional Foresters.* Only one level of administrative review is available on written decisions by Forest Service line officers below the level of the Chief and above the level of the District Ranger. The levels of available review are as follows:

(1) If the decision is made by a Forest Supervisor, the notice of appeal is filed with the Regional Forester;

(2) If the decision is made by a Regional Forester, the notice of appeal is



filed with the Chief of the Forest Service.

(c) *Decisions made by the District Ranger.* Two levels of appeal are available for written decisions by the District Ranger.

(1) The initial appeal is filed with the Forest Supervisor.

(2) The notice of appeal for a second level of review must be filed with the Regional Forester within 15 days of the Forest Supervisor's appeal decision. Upon receiving the appeal, the Regional Forester shall promptly request the first level appeal record from the Forest Supervisor. The review shall be conducted on the existing file and no additional information shall be added to the file.

(d) *Discretionary review of dismissal decisions.* Dismissal decisions rendered by Forest Service line officers pursuant to this part (§ 217.11) are subject to only one level of discretionary review (§ 217.11) as follows:

(1) If the Reviewing Officer was the Forest Supervisor, the Regional Forester has discretion to review.

(2) If the Reviewing Officer was the Regional Forester, the Chief has discretion to review.

(3) If the Reviewing Officer was the Chief, the Secretary of Agriculture has discretion to review.

(e) *Discretionary review of appeal decisions.* Appeal decisions rendered by Regional Foresters and the Chief pursuant to this part are subject to only one level of discretionary review as follows:

(1) If the Reviewing Officer was the Regional Forester, the Chief has discretion to review, except as provided for in paragraph (e)(3) of this section.

(2) If the Reviewing Officer was the Chief, the Secretary of Agriculture has discretion to review.

(3) A Regional Forester's decision on a second-level appeal constitutes the final administrative determination of the Department of Agriculture on the appeal and is not subject to discretionary review by a higher level officer under the subpart.

[54 FR 3357, Jan. 23, 1989, as amended at 54 FR 34509, Aug. 21, 1989]

#### § 217.8 Appeal process sequence.

(a) *Filing procedures.* To appeal a decision under this part, a person or organization must:

(1) File a written notice of appeal with the next higher line officer in accordance with the provisions of § 217.9 of this part and simultaneously send a copy of the notice of the appeal to the Deciding Officer. As provided in § 217.11, failure to comply with the simultaneous filing requirement of this section shall result in dismissal of the appeal without a decision on the merits.

(2) File the notice of appeal within 45 days of the date specified in the published legal notice for project decisions or non-significant amendments to land and resource management plans documented in a Decision Memo, Decision Notice, or Record of Decision, or programmatic decisions documented in a Decision Notice.

(3) File the notice of appeal within 90 days of the date specified in the published legal notice for land and resource management plan approvals, significant amendments, or revisions, and for other programmatic decisions documented in a Record of Decision.

(b) *Computation of time periods.* (1) The day after the published notices required in § 217.5(b) is the first day of the appeal period provided for in paragraphs (a)(2) and (a)(3) of this section. All other time periods applicable to this part are tied to the filing of a notice of appeal and begin on the first day following that filing.

(2) All time periods in this rule are to be computed using calendar days. Saturdays, Sundays, and Federal holidays are included in computing the time period for filing a notice of appeal; however, when the filing period would expire on a Saturday, Sunday, or Federal holiday, the filing time is extended to the end of the next Federal working day.

(c) *Evidence of timely filing.* It is the responsibility of the appellant to file the notice on or before the last day of the filing period. In the event of question, a legible postmark will be considered evidence of timely filing. Where postmarks are illegible, the Reviewing Officer shall rule on the timely filing



of the appeal. Notices of appeal that are filed before the filing period specified in the published legal notice shall be accepted, but premature filing does not affect timeframes specified in this rule.

(d) *Time extensions.* (1) The 45-day/90-day filing periods for a notice of appeal are not extendable.

(2) Time extensions are not permitted except as provided in §§ 217.12, 217.13, and 217.17 of this subpart.

(e) *Appeal decision.* Unless time has been extended as provided for in §§ 217.12 and 217.13, the Reviewing Officer shall not exceed the following time periods for rendering an appeal decision:

(1) An appeal of a project decision, not more than 100 days from the date the notice of appeal was filed.

(2) An appeal of a land and resource management plan approval, significant amendment, or revision, or on a programmatic decision documented in a Record of Decision, not more than 160 days from the date the notice of appeal was filed.

(3) A second-level appeal of a District Ranger's decision, not more than 30 days from the date the first-level appeal record was received.

(4) In the event of multiple appeals of the same decision, the appeal decision date shall be calculated from the filing date of the last notice of appeal.

[54 FR 3357, Jan. 23, 1989, as amended at 55 FR 7895, Mar. 6, 1990]

#### § 217.9 Content of a notice of appeal.

(a) It is the responsibility of those who appeal a decision under this part to provide a Reviewing Officer sufficient narrative evidence and argument to show why the decision by the lower level officer should be changed or reversed.

(b) At a minimum, a written notice of appeal filed with the Reviewing Officer must:

(1) State that the document is a Notice of Appeal filed pursuant to 36 CFR part 217;

(2) List the name, address, and telephone number of the appellant;

(3) Identify the decision about which the requester objects;

(4) Identify the document in which the decision is contained by title and subject, date of the decision, and name and title of the Deciding Officer.

(5) Identify specifically that portion of the decision or decision document to which the requester objects;

(6) State the reasons for objecting, including issues of fact, law, regulation, or policy, and, if applicable, specifically how the decision violates law, regulation, or policy; and

(7) Identify the specific change(s) in the decision that the appellant seeks.

(c) When a Notice of Appeal is more than 10 pages in length, appellants must file two copies of a Notice of Appeal with the Reviewing Officer and simultaneously send two copies to the Deciding Officer.

[54 FR 3357, Jan. 23, 1989, as amended at 55 FR 7895, Mar. 6, 1990]

#### § 217.10 Implementation and stays of decisions.

(a) Implementation of any decision subject to appeal pursuant to this part shall not occur for 7 calendar days following publication of the legal notice of the decision as required in this part.

(b) Requests to stay the approval of land and resource management plans prepared pursuant to 36 CFR part 219 shall not be granted. However, requests to stay implementation of a project or activity included in such a plan will be considered as provided for in paragraph (b) of this section.

(c) Where a project or activity would be implemented before an appeal decision could be issued, the Reviewing Officer shall consider written requests to stay implementation of that decision pending completion of the review.

(d) To request a stay of implementation, an appellant must—

(1) File a written request with the Reviewing Officer;

(2) Simultaneously send a copy of the stay request to any other appellant(s), intervenor(s), and to the Deciding Officer; and

(3) Provide a written justification of the need for a stay, which at a minimum includes the following:

(i) A description of the specific project(s), activity(ies), or action(s) to be stopped.



(ii) Specific reasons why the stay should be granted in sufficient detail to permit the Reviewing Officer to evaluate and rule upon the stay request, including at a minimum:

(A) The specific adverse effect(s) upon the requester;

(B) Harmful site-specific impacts or effects on resources in the area affected by the activity(ies) to be stopped; and

(C) How the cited effects and impacts would prevent a meaningful decision on the merits.

(e) The Reviewing Officer shall rule on stay requests within 10 days of receipt of a request.

(f) In deciding a stay request, a Reviewing Officer shall consider:

(1) Information provided by the requester pursuant to paragraph (c) of this section;

(2) The effect that granting a stay would have on preserving a meaningful appeal on the merits;

(3) Any information provided by the Deciding Officer or other party to the appeal in response to the stay request; and

(4) Any other factors the Reviewing Officer considers relevant to the decision.

(g) A Reviewing Officer must issue a written decision on a stay request.

(1) If a stay is granted, the stay shall specify the specific activities to be stopped, duration of the stay, and reasons for granting the stay.

(2) If a stay is denied in whole or in part, the decision shall specify the reasons for the denial.

(3) A copy of a decision on a stay request shall be sent to the appellant(s), intervenor(s), and the Deciding Officer.

(h) A decision may be implemented during a review unless the Reviewing Officer has granted a stay.

(i) A Reviewing Officer's decision on a request to stay implementation of a project or activity is not subject to discretionary review at the next administrative level, except when the Reviewing Officer is the Forest Supervisor. In this instance, the Regional Forester has discretion to review.

[54 FR 3357, Jan. 23, 1989, as amended at 55 FR 7896, Mar. 6, 1990]

#### § 217.11 Dismissal without review.

(a) A Reviewing Officer shall dismiss an appeal and close the appeal record without decision on the merits when:

(1) The notice is not filed within the time specified in § 217.8 of this part;

(2) The requested relief or change cannot be granted under law, fact, or regulation existing when the decision was made.

(3) The notice of appeal fails to meet the minimum requirements of § 217.9 of this part to such an extent that the Reviewing Officer lacks adequate information on which to base a decision;

(4) The decision at issue is being appealed under another administrative proceeding;

(5) The decision is excluded from appeal pursuant to § 217.4 of this part;

(6) The appellant(s) withdraws the appeal; or

(7) The appellant fails to file the notice of appeal with the Reviewing Officer and simultaneously send a copy to the Deciding Officer as required in § 217.8(a).

(b) The Reviewing Officer shall give written notice of a dismissal to all participants that includes an explanation of why the appeal is dismissed.

(c) A Reviewing Officer's dismissal decision is subject to discretionary review at the next administrative level as provided for in § 217.7(d) of this part, except when a dismissal decision results from withdrawal of an appeal by an appellant or withdrawal of the initial decision by the Deciding Officer.

[54 FR 3357, Jan. 23, 1989, as amended at 55 FR 7896, Mar. 6, 1990]

#### § 217.12 Resolution of issues.

(a) When a decision is appealed, appellants or intervenors may request meetings with the Deciding Officer to discuss the appeal, either together or separately, to narrow issues, agree on facts, and explore opportunities to resolve the issues by means other than review and decision on the appeal. Reviewing Officers may, on their own initiative, request the Deciding Officer to meet the participants to discuss the appeal and explore opportunities to resolve the issues. However, Reviewing Officers may not participate in such



discussions. At the request of the Deciding Officer, or on their own initiative, Reviewing Officers may extend the time periods for review to allow for conduct of meaningful negotiations after the Deciding Officer has transmitted the decision documentation and after the time period for intervention has elapsed. In granting an extension, the Reviewing Officer must establish a specific time period for the conduct of negotiations.

(b) The Deciding Officer has the authority to withdraw a decision, in whole or in part, during the appeal. Where a Deciding Officer decides to withdraw a decision, all participants to the appeal will be notified that the case is dismissed. A Deciding Officer's subsequent decision to reissue or modify the withdrawn decision constitutes a new decision and is subject to appeal under this part.

[54 FR 3357, Jan. 23, 1989; 54 FR 13807, Apr. 5, 1989, as amended at 55 FR 7896, Mar. 6, 1990]

§ 217.13 Reviewing officer authority.

(a) *Discretion to establish procedures.* A Reviewing Officer may issue such determinations and procedural instructions as appropriate to ensure orderly and expeditious conduct of the appeal process as long as they are in accordance with all the applicable rules and procedures of this part.

(1) In appeals involving intervenors, the Reviewing Officer may prescribe special procedures to conduct the appeal.

(2) In case of multiple appeals of a decision, the Reviewing Officer may prescribe special procedures as necessary to conduct the review.

(3) All participants shall receive notice of any procedural instructions or decisions governing conduct of an appeal.

(4) Procedural instructions and decisions are not subject to review by higher level officers.

(b) *Consolidation of multiple appeals.* (1) The Reviewing Officer shall determine whether to issue one appeal decision or separate decisions in cases involving multiple notices of appeal under this part, or if the same decision is also under appeal pursuant to 36 CFR Part 251. In the event of a con-

solidated decision, the Reviewing Officer shall give advance notice to all who have appealed the decision.

(2) Decisions to consolidate an appeal decision are not subject to review by higher level officers.

(c) *Requests for information.* At any time during the appeal process, the Reviewing Officer at the levels specified in § 217.7 (a), (b), or (c)(1) of this part may extend the time periods for review to request additional information from an appellant, intervenor, or the Deciding Officer. Such requests shall be limited to obtaining and evaluating information needed to clarify issues raised. The Reviewing Officer shall notify all participants of such requests and provide them opportunity to comment on the information obtained.

[54 FR 3357, Jan. 23, 1989, as amended at 54 FR 34509, Aug. 21, 1989]

§ 217.14 Intervention.

(a) For a period not to exceed 20 days following the filing of a first level notice of appeal, the Reviewing Officer shall accept requests to intervene in the appeal from any interested or potentially affected person or organization. Requests to intervene in an appeal at the second level (§ 217.7(c)) or during the discretionary review (§ 217.7(e)) shall not be accepted.

(b) Upon receiving such a request, the Reviewing Officer shall promptly acknowledge the request, in writing, and mail the Notice of Appeal to the intervenor.

(c) The Reviewing Officer shall accept into the appeal record written comments about the appeal from an intervenor for a period not to exceed 30 days following acknowledgement of the intervention request (§ 217.14(b)).

(d) Intervenors must concurrently furnish copies of all submissions to the appellant. Failure to provide copies may result in removal of a submission from the appeal record.

(e) An intervenor cannot continue an appeal if the appeal is dismissed (§ 217.11).

§ 217.15 Appeal record.

(a) Upon receipt of a copy of the notice of appeal, the Deciding Officer



shall assemble the relevant decision documentation (§ 217.2) and pertinent records, and transmit them to the Reviewing Officer within 30 days. The 30-day time period is not extendable under any circumstances.

(b) In transmitting the decision documentation to the Reviewing Officer, the Deciding Officer shall indicate where the documentation addresses the issues raised in the notice of appeal. The Deciding Officer shall provide a copy of the transmittal letter to the appellant(s) and intervenor(s).

(c) The review of decisions appealed under this part focuses on the documentation developed by the Deciding Officer in reaching decisions. The records on which the Reviewing Officer shall conduct the review consists of the notice of appeal, any written comments submitted by intervenors, the official documentation prepared by the Deciding Officer in the decisionmaking process, the Deciding Officer's letter transmitting those documents to the Reviewing Officer, and any appeal related correspondence, including additional information requested by the Reviewing Officer pursuant to § 217.13 of this part.

(d) It is the responsibility of the Reviewing Officer to maintain in one location a file of documents related to the decision and appeal.

(e) *Closing the record.* (1) In appeals with intervenors, the appeal record shall close upon receipt of comments on the appeal by the intervenor, but not later than the end of the 30-day period provided for intervenors to submit comments (§ 217.14(c)).

(2) In appeals without intervenors, the appeal record shall close upon receipt of the decision documentation from the Deciding Officer, unless time has been extended as provided for in §§ 217.12 and 217.13.

(f) The appeal record is open to public inspection at any time during the review.

(g) In appeals involving initial decisions of the Chief (217.7(a)), the establishment of an administrative record as defined in paragraph (a) of this section shall not begin unless the Secretary elects to review the appeal. Except for the initial notice of appeal,

any filings made previous to the Secretary's election to review will not be accepted.

[54 FR 3357, Jan. 23, 1989, as amended at 54 FR 34509, Aug. 21, 1989; 55 FR 7896, Mar. 6, 1990]

#### § 217.16 Decision.

(a) The Reviewing Officer shall not issue a decision prior to the record closing (§ 217.15(e)).

(b) The Reviewing Officer's decision shall, in whole or in part, affirm or reverse the original decision. The Reviewing Officer's decision may include instructions for further action by the Deciding Officer.

(c) An appeal decision must be consistent with applicable law, regulations, and orders.

(d) The Reviewing Officer shall send a copy of the decision to all participants and to others upon request.

(e) Unless a higher level officer exercises the discretion to review a Reviewing Officer's decision as provided at § 217.7(e), or the Reviewing Officer is a Forest Supervisor, the Reviewing Officer's decision is the final administrative decision of the Department of Agriculture and that decision is not subject to further review under this part.

#### § 217.17 Discretionary review.

(a) Petitions or requests for discretionary review shall not, in and of themselves, give rise to a decision to exercise discretionary review. In electing to exercise discretion, a Reviewing Officer should consider, but is not limited to, such factors as controversy surrounding the decision, the potential for litigation, whether the decision is precedential in nature, or whether the decision modifies existing or establishes new policy.

(b) As provided for in §§ 217.7 (d) and (e), 217.10(h), and 217.11, stay decisions rendered by a Forest Supervisor, certain dismissal decisions rendered by Forest Service line officers, and first-level appeal decisions rendered by Regional Foresters and the Chief (§ 217.16) are subject to discretionary review at the next highest administrative level. Within one day following the date of any decision subject to such discretionary review, the Re-



viewing Officer shall forward a copy of the decision and the decision documents (§ 217.2) upon which the appeal was predicated to the next higher officer.

(c) When a stay of implementation is in effect, it shall remain in effect until the end of the 15-day period in which a higher level officer must decide whether or not to review a Reviewing Officer's decision (§ 217.17(d)), or until the end of the 15-day period provided for a second level appeal of a District Ranger's decision (§ 217.7(c)). If the higher level officer decides to review the Reviewing Officer's decision or a second level appeal is filed, the stay will remain in effect until a decision is issued (§ 217.17(f)), or until the end of the 30-day review period provided in § 217.17(g), whichever is less.

(d) The higher level officer shall have 15 days from date of receipt to decide whether or not to review a lower level appeal decision, and may request and use the appeal record in deciding whether or not to review the decision, including decisions to dismiss. If the record is requested, the 15-day period is suspended at that point. The lower level Reviewing Officer shall forward it within 5 days of the request. Upon receipt, the higher level officer shall have 15 days to decide whether or not to review the lower level decision. If that officer takes no action by the expiration of the 15-day period or the additional 15-day period following receipt of the record, the decision of the Reviewing Officer stands as the final administrative decision of the Department of Agriculture. All participants shall be notified by the discretionary level whether or not the decision will be reviewed.

(e) Where an official exercises the discretion in § 217.7 (d) or (e) of this subpart to review a dismissal or appeal decision, the discretionary review shall be made on the existing appeal record and the lower level Reviewing Officer's appeal decision. The record shall not be reopened to accept additional submissions from any source including the Reviewing Officer whose appeal decision is being reviewed.

(f) The second level Reviewing Officer shall conclude the review within 30 days of the date of notice issued to

participants that the lower level decision will be reviewed, and shall send a copy of the review decision to all participants.

(g) If a discretionary review decision is not issued by the end of the 30-day review period, appellants and intervenors shall be deemed to have exhausted their administrative remedies for purposes of judicial review. In such case, the participants shall be notified by the discretionary level.

[54 FR 3357, Jan. 23, 1989; 54 FR 13807, Apr. 5, 1989, as amended at 54 FR 34510, Aug. 21, 1989; 55 FR 7896, Mar. 6, 1990]

#### § 217.18 Policy in event of judicial proceedings.

It is the position of the Department of Agriculture that any filing for Federal judicial review of a decision subject to review under this part is premature and inappropriate unless the plaintiff has first sought to invoke and exhaust the procedures available under this part. This position may be waived upon a written finding by the Chief.

#### § 217.19 Applicability and effective date.

(a) The appeal procedures established in this part apply to all appealable decision documents signed on or after February 22, 1989.

(b) Notices of appeal filed under 36 CFR 211.16, 36 CFR 211.18, 36 CFR 228.14, and 36 CFR 292.15 prior to February 22, 1989 remain subject to those procedures.

[54 FR 3357, Jan. 23, 1989, as amended at 54 FR 6892, Feb. 15, 1989]

#### § 217.20 Special procedures applicable to appeals of certain timber sales in Oregon and Washington.

(a) Pursuant to section 318 of Pub. L. 101-121, decisions made in Fiscal Year 1990 to offer timber for sale on the 13 national forests in Oregon and Washington listed in paragraph (b) of this section and documented in a Decision Memo, Decision Notice, or Record of Decision shall be subject to appeal under the special procedures of this section.

(b) Decisions subject to appeal under this section are limited to decisions made to offer timber for sale between

October 24, 1989, and September 30, 1990, and awarded prior to September 30, 1990, on the Deschutes, Mt. Hood, Rogue River, Siskiyou, Siuslaw, Umpqua, Willamette, Winema, Gifford Pinchot, Mt. Baker-Snoqualmie, Okanogan, Olympic, and Wenatchee National Forests.

(c) Notwithstanding other provisions of this part, the following procedures shall apply to appeals of decisions covered by this section:

(1) Only one level of appeal shall be available.

(2) An appeal decision rendered pursuant to this section shall not be subject to discretionary review (§ 217.17).

(3) If a stay is granted on any decision covered by this section, the appeal decision shall be issued by the Regional Forester 45 days from the date the stay is granted.

(4) If a stay is granted, anyone wishing to intervene shall have 15 days following the granting of a stay to file notice of intervention and comments; otherwise, the timeframe for intervention set forth in § 217.14 of this part shall apply.

(5) In the event of a filing for Federal judicial review of a decision subject to this section prior to issuance of an appeal decision, the Department shall not invoke the policy set forth in § 217.18 of this part.

(6) If, during the pendency of an appeal, the same decision is challenged in Court, the Reviewing Officer shall close and dismiss the appeal without decision on the merits and notify the parties to the appeal.

(d) Except as otherwise provided by and to the extent not inconsistent with, this section, all other provisions of this part shall apply to any appeal covered by this section.

(e) The appeal procedures of this section apply to timber sale decisions made after October 23, 1989 and prior to October 1, 1990, for timber sales to be awarded prior to October 1, 1990.

[54 FR 46893, Nov. 8, 1989]

*[The End of  
The Appeal Regs.]*



**APPENDIX M**  
**Forest Service Policy on Bringing Grazing**  
**Permits in Line with Forest Plans**

[See Next Page]



Reply to: 2230

Date: July 27, 1990

Subject: Clarification - Conformance of Grazing and Livestock Use Permits  
with Forest Plan Direction

To: Regional Foresters, except R-10

This further clarifies our April 17 direction for bringing grazing and livestock use permits into conformance with Forest Plan direction.

First, when developing, modifying, or amending allotment management plans (AMP's) or when a permit is issued or reissued, this will be done in conformance with those laws, regulations, and policies that apply to livestock grazing on National Forest System lands in conformance with the directions set forth in:

- 36 CFR 222, Subpart A--Grazing and Livestock Use on the National Forest System.
- Forest Service Manual (FSM) 2210, Range Management Planning.
- FSM 2230, Grazing and Livestock Use Permit System.
- Forest Service Handbook (FSH) 2209.21, Range Analysis and Management Handbook (Regional).
- FSH 2209.13, Grazing Permit Administration Handbook.
- 40 CFR 1500-1508, Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act.
- FSM 1920, Land and Resource Management Planning.
- FSM 1950, Forest Service National Environmental Policy Act Process.
- FSH 1909.15, National Environmental Policy Act Process Handbook.
- FSH 1909.12, Land and Resource Management Planning Handbook.

Second, the following procedures shall replace those outlined for the situation entitled "- Substantial change needed in AMP to be consistent or no AMP exists -" of the April 17 memorandum.

Situation.

- No AMP or AMP conflicts with the Forest Plan standards and guidelines -

Action.

Upon receipt of an application associated with a waiver or expiration of a permit, a permit shall be issued if the Forest Plan does not prohibit grazing in the area designated on the application. Part 3 of the permit issued shall include as special terms and conditions:



(1) The Forest Plan standards and guidelines applicable to livestock grazing, with special attention given to water quality, threatened and endangered species, riparian areas, and management indicator species.

(2) A clause which states the date a new AMP is expected to be completed and that, upon completion of the new AMP, the term permit will be issued for a 10-year period with the new AMP as part of the permit.

Third, whenever an AMP is developed, amended, or modified, it will be done in careful coordination, consultation, and cooperation with the permittees (FSM 2210.32(2)). When a Forest Plan is amended or revised, a special effort shall be made to notify and involve livestock grazing permittees during the process (FSM 1903.2).

Fourth, the permitted number or season of use will not be modified when a waiver with application for a new permit is processed, or when an expired permit is reissued, unless the decision to make the change has already been issued (FSM 2231.03(9)). Decisions to change the permitted numbers or season of use shall be based on resource conditions, appropriate policy, and legal requirements that are applicable to livestock grazing.

/s/ James C. Overbay  
for  
F. DALE ROBERTSON  
Chief

cc:  
OGC  
EC  
LMP  
Lands  
Rn

RGE:R.Williamson:sc:2230:7/16/90

DRAWER:D.W.Nelson, FOLDER:NEPA/AMP task group, DOC:07/16/90ClarifyNFMA/NEPA



Reply to: 2230

Date: April 17, 1990

Subject: Conformance of Grazing and Livestock Use Permits with Forest Plan Direction

To: Regional Foresters, except R-10

The National Forest Management Act (NFMA) requires resource permits, contracts and other instruments be consistent with land management plans (16 U.S.C. 1604(i)). It states: "Resource plans and permits, contracts, and other instruments for the use and occupancy of National Forest System lands shall be consistent with the land management plans. Those resource plans and permits, contracts, and other such instruments currently in existence shall be revised as soon as practicable to be made consistent with such plans."

It is the intent of NFMA and the implementing regulations that as existing term grazing permits are reissued, or new term grazing permits issued, they will be consistent with Forest Plan direction. Temporary grazing permits and livestock use permits, which are issued for 1 year or less, will comply with Forest Plan direction when issued. The Chief emphasized this requirement in his February 23 letter concerning Forest Plan implementation. The objective of this letter is to identify the approach to be used to implement this direction.

Consistency is determined by comparing the grazing permit, including the allotment management plan (AMP), with the Forest Plan direction stated in terms of Forest-wide and management area standards and guidelines. The AMP and grazing permit(s) must be made consistent with the Forest Plan, or the Forest Plan must be amended (FSH 1909.12 Chapter 5.31a 1.). Any Forest Plan amendment must include appropriate public involvement as well as appropriate NEPA analysis and documentation.

All permittees must be informed of the standards, guidelines, and management requirements of the Forest Plan once the Plan is approved. The implementation of Forest Plan direction pertaining to each allotment should be personally discussed with the permittees on that allotment and this discussion documented.

Forest Supervisors and authorized District Rangers shall bring grazing permits into compliance as soon as practical. In any case, when they reissue permits, because of expiration or waiver, or issue new permits, the permits will comply with the Forest Plan. Authorized officers will accomplish this by;

- (1) modifying the AMP, which is part of the permit, to include the standards and guidelines, or
- (2) modifying part 3 of the grazing permit to include the standards and guidelines if no AMP exists.

The AMP is the most appropriate vehicle for implementing the standards and guidelines of the Forest Plan. Priority is to be placed on developing AMPs for all allotments which incorporate Forest Plan standards and guidelines. Each Forest Supervisor shall establish a priority schedule for developing AMPs consistent with Forest Plan direction. Among the factors used in developing the schedule should be the expiration date of existing term grazing permits and budget availability.



The following is a list of various situations and the action necessary to make the permitted grazing use consistent with the Forest Plan.

Existing Stocked Allotment.

- No change needed in the AMP to be consistent and NEPA documentation related to the AMP adequately considers current conditions, regulations, and policy. Any permit reissued under the above conditions may rely on the existing NEPA documentation and the permit record shall contain a statement by the issuing officer that the above conditions have been met.
- No change needed in the AMP to be consistent, but no current NEPA documentation exists for the AMP - Conduct the necessary environmental analysis and document the results as appropriate. In those AMP modifications that have little potential for increasing soil movement, degrading water quality, or impacting sensitive resource values and where no extraordinary circumstances exist, the modification may normally be categorically excluded from documentation in an EIS or EA. However, the decision to proceed must be documented in a decision memo. Reissue the permit, if appropriate.
- Minor change needed in AMP to be consistent - Conduct the appropriate NEPA analysis and modify the AMP. Where this modification meets the criteria discussed above, the modification may normally be categorically excluded from documentation in an EIS or EA. However, the decision must be documented in a decision memo. Reissue the permit with the modified AMP as a part, if appropriate.
- Substantial change needed in AMP to be consistent or no AMP exists -
  - (1) AMP exists - Conduct an environmental analysis and modify the AMP to be consistent with the Forest Plan. Prepare appropriate NEPA documentation and decision document. Reissue the permit with the AMP as a part, if appropriate.
  - (2) No AMP exists - Conduct an environmental analysis of the allotment involved and include the Forest Plan direction in part 3 of permit(s) to be issued to replace expired or waived permit(s). Prepare appropriate NEPA documentation and decision document. Reissue permit(s), if appropriate.

New or Vacant (Nonstocked) Allotment.

- Conduct an environmental analysis and develop an AMP which is consistent with the Forest Plan. Prepare appropriate NEPA documentation and decision document. Issue the new permit, if appropriate.

The administrative appeal regulations, 36 CFR 217 or 36 CFR 251, apply to decisions concerning modification of permits or AMPs and issuance or reissuance of permits, as appropriate.

/s/ James C. Overbay for

F. DALE ROBERTSON  
Chief



## APPENDIX N

### State Offices of the U.S. Soil Conservation Service for the Western States.

This Appendix should be up with the other ones containing addresses and phone numbers but then we would have had to change all the cites to the Appendices in the text (!!); so here it is--out of place, but hopefully still helpful for contacting the Soil Conservation Service personnel in your area. The SCS is part of the Department of Agriculture and focuses on helping private land owners minimize soil erosion. Their people are well trained and they should have lots of information on range management for your area.

#### ALASKA

201 E. 9th, Suite 300  
Anchorage, AK 99501-3687  
907-271-2424

#### ARIZONA

201 E. Indianola Ave., Suite 200  
Phoenix, AZ 85012  
602-640-2247

#### CALIFORNIA

2121-C Second St.  
Davis, CA 95616  
916-449-2848

#### COLORADO

655 Parfet St., Room E200C  
Lakewood, CO 80215-5517  
303-236-2886

#### IDAHO

3244 Elder St, Room 124  
Boise, ID 83705  
208-334-1601

#### MONTANA

Federal Building, Room 443  
10 East Babcock Street  
Bozeman, MT 59715  
406-587-6813

#### NEVADA

1201 Terminal Way, Room 219  
Reno, NV 89502  
702-784-5863

#### NEW MEXICO

517 Gold Ave. SW, Room 3301  
Albuquerque, NM 87102  
505-766-2173

#### OREGON

Federal Building, Room 1640  
1220 SW Third Avenue  
Portland, OR 97204  
503-326-2751

#### UTAH

Federal Building, Room 4402  
125 So. State Street  
Salt Lake City, UT 84147-0350  
801-524-5050

#### WASHINGTON

West 920 Riverside Ave., Room 360  
Spokane, WA 99201  
505-353-2337

#### WYOMING

Federal Office Building  
100 East "B" Street, Room 3124  
Casper, WY 82601  
307-261-5201



